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Supreme Court, U.S.
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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

DONALD J. WILLY,

Petitioner,

versus

THE COASTAL CORPORATION, ET AL.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Michael A. Maness
Counsel of Record
for Petitioner
1900 North Loop West
Suite 500
Houston, Texas 77018
(713) 680-9922

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QUESTIONS PRESENTED

1. In the absence of subject matter jurisdiction, does Article III § 2 of the Constitution foreclose a federal court's award of attorney's fees to a defendant that wrongly removed the case from a state court, against a plaintiff who successfully contested removal?

2. In the absence of subject matter jurisdiction, is it appropriate, reasonable, and within a federal court's discretion under its inherent power, or under Rule 11, F.R.Civ.P., to award attorney's fees of $19,307.00 to an $8 billion corporate defendant that wrongly removed the case from a state court, against a plaintiff with assets of less than $21,000.00, who successfully contested removal?

3. Is a party liable for attorney's fees awarded because of his lawyer's purported Rule 11 violations, if he did not sign the pleadings or participate in other alleged misconduct for which his lawyer was sanctioned?

LIST OF ALL PARTIES

Petitioner Donald J. Willy was the plaintiff in the district court and the appellant in the court of appeals.

The respondents in this Court, defendants in the district court, and appellees in the court of appeals are the Coastal Corporation, Coastal States Management Company, James R. Paul, George L. Brundrett, Charles F. Jones, William L. Dunker, and E. C. (Bud) Simpson.

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OPINIONS BELOW

The district court's opinion on the merits, following Coastal's improvident removal of the case from a Texas state court, is reproduced in the appendix at page A-1. *Willy v. Coastal Corp.*, 647 F. Supp. 116 (S.D. Tex. 1986). The district court's initial unreported order, awarding attorney's fees of $22,625.00 against Petitioner and his lawyer as a sanction under Rule 11, F.R.Civ.P., is reproduced at page A-6.

The Fifth Circuit's first opinion, *Willy v. Coastal Corp.*, 855 F.2d 1160 (5 Cir. 1988), reversing the district court's decision on the merits for lack of Article III subject matter jurisdiction, reversing the Rule 11 sanctions order, and remanding the case for reconsideration in light of the intervening *en banc* decision in *Thomas v. Capital Security Services, Inc.*, 836 F.2d 866 (5 Cir. 1988), is reproduced at page A-9.

The district court's second unreported order, awarding attorney's fees of $19,307.00 against Petitioner and his lawyer as a Rule 11 sanction, is reproduced at page A-40. The Fifth Circuit's second opinion, *Willy v. Coastal Corp.*, 915 F.2d 965 (5 Cir. 1990), summarily affirming the sanctions award on the briefs, without oral argument, is reproduced at page A-48.

JURISDICTION

The opinion and judgment of the court of appeals, reproduced in the appendix at pages A-48 and A-56, were entered on October 26, 1990. Petitioner was granted a timely extension within which to file a petition for panel rehearing and suggestion for rehearing *en banc*, which were timely filed on November 14, 1990.

The Fifth Circuit's order denying the petition for panel rehearing and suggestion for rehearing *en banc*, reproduced in the appendix at page A-56, was entered on November 27, 1990. This petition for certiorari was filed with the Clerk of this Court within 90 days thereafter and is timely.

This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND OTHER PROVISIONS

The relevant provisions of Article III of the Constitution of the United States, of Title 28 of the United States Code, and of Rule 11, F.R.Civ.P., are reproduced in the appendix beginning at page A-57.

STATEMENT OF THE CASE

Petitioner Donald J. Willy, a Houston attorney hired in 1981 as in-house environmental counsel by a subsidiary of the Coastal Corporation, was fired in 1984. In 1985, represented by George A. Young, another Houston lawyer, Willy sued Coastal and others ("Coastal") in a Texas state court, alleging that the company terminated his employment because of his refusal to violate the criminal provisions of state and federal environmental statutes and federal securities laws. The state court petition [R. 7: 1096] alleged only state causes of action and sought damages and other relief exclusively under Texas law. None of Willy's claims arose under or was created by a federal statute, and he did not allege entitlement to any federal remedy.

Coastal wrongly removed the case to the United States district court in Houston, mistakenly claiming that resolution of the controversy would require "significant

interpretation and application" of federal environmental and securities statutes, and that federal law therefore was "an essential and necessary element" of Willy's state law cause of action, conferring original federal question jurisdiction [R. 7: 1092, 1093]. Young promptly filed a motion to remand the case to the state court, on the grounds that no federal question was presented, that there was no diversity of citizenship, and that the federal district court lacked subject matter jurisdiction [R. 7: 1049].

Before any supposedly sanctionable misconduct occurred, the district court mistakenly denied the motion to remand [R. 6: 877]. Two subsequent requests by Willy's counsel to return the case to the state court for lack of subject matter jurisdiction also were erroneously rejected [R. 4: 469-70; R. 9: 5-6].

Coastal then filed a motion to dismiss Willy's principal state law claim on its merits [R. 6: 779]. Young responded by filing a reply to Coastal's motion to dismiss [R. 5: 567], a six-page motion for partial summary judgment, supported by Willy's 12-page affidavit, and a 110-page supporting brief [1] [R. 5: 609; R. 6: 744], addressed principally to Coastal's 14 defenses and a counterclaim [R. 7: 1059]. Young also sought permission to file in support of his partial summary judgment motion approximately 1,200 pages of documents Coastal produced during discovery in an earlier administrative proceeding Willy had initiated against the company in the

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[1] The court of appeals mistakenly refers to a nonexistent "110-page motion for summary judgment," at one point mischaracterizing the document as "the infamous 110-page summary judgment motion." 915 F.2d at 966 n. 3 and 968 [A-49, 54, 55].

United States Department of Labor [R. 5: 565; R. 6: 742]. The district court granted permission for Young to file the documents [R. 4: 527; R. 9: 38].

Coastal filed a response to the motion for partial summary judgment, demanding Rule 11 sanctions on the grounds that there was "no evidence to support the summary judgment" and that the motion was "unwarranted and wholly inadequate" [R. 4: 544]. Coastal filed a supplemental response and brief supporting its request for sanctions, setting out what it regarded as inappropriate behavior by Young and attributing his actions to Willy [R. 4: 485; 512].[2]

In its published memorandum and order, *Willy v. Coastal Corp.*, 647 F. Supp. 116 (S.D. Tex. 1986) [A-1], the district court mistakenly declined to reexamine its own subject matter jurisdiction, erroneously rejected on its merits Willy's principal state-law claim, and granted Coastal's motion to dismiss the remainder of the case. In an unpublished order [A-6] the court also granted Coastal's motion for Rule 11 sanctions and awarded attorney's fees of $22,625.00 against both Willy and Young, jointly and severally. The order attributed personal responsibility to Willy for Young's pleadings, although he did not sign them, and for all of Young's other supposed misconduct.[3]

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[2] Although no discovery was undertaken, only two potentially dispositive motions were filed, and less than two hours of hearings were held, Coastal claimed attorney's fees and costs of more than $85,000.00 [R. 4: 427].

[3] The first order sanctioned Willy for Young's filing of the motion for partial summary judgment, the 110-page supporting brief, the 1,200 pages of documents that the district court granted permission for Young to file, and another brief misciting a provision of the Federal Rules of Evidence [R. 5: 567, 572]. Willy did not sign any of these pleadings. The district court also cited Willy's 12-page affidavit supporting the motion for partial summary judgment, believing that the affidavit failed properly to authenticate the documents.

Willy filed in the court of appeals a motion to stay the sanctions order, asserting that Young had been hospitalized in a Minnesota alcohol and drug abuse treatment facility. The Fifth Circuit denied the stay to permit the district court to consider "the health condition of Mr. Young, who, as counsel in the case appears to have been significantly responsible for incurring the Rule 11 sanctions [that are the] subject of this motion" [R. 3: 290-91].[4]

Willy then discharged Young, retained his present counsel, and appealed. The Fifth Circuit sustained Willy's contention that the district court lacked subject matter jurisdiction, reversed its mistaken decision on the merits, and directed that Willy's claims be remanded to the state court from which Coastal had improperly removed them almost three years earlier. *Willy v. Coastal Corp.*, 855 F.2d 1160 (5 Cir. 1988) [A-9, 10]. Stating that "we and the district court retain jurisdiction over the Rule 11 aspects of this case, even though we have held that removal was improper," 855 F.2d at 1172 [A-35],[5] the

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[4] Willy did not renew his application for a stay in the district court. That court was aware of Young's hospitalization after entry of the sanctions order [R. 8: 3-8].

[5] *Vatican Shrimp Co. v. Solis*, 820 F.2d 674 (5 Cir. 1987), *cert. denied* 484 U.S. 953 (1987), and *News-Texan, Inc. v. City of Garland*, 814 F.2d 216 (5 Cir. 1987), cited by the first panel to support its *dictum* that federal courts without subject

panel also reversed the Rule 11 sanctions order and remanded the case for reconsideration in light of the intervening *en banc* decision in *Thomas v. Capital Security Services, Inc.*, 836 F.2d 866 (5 Cir. 1988) [A-37, 38].

On remand, Willy argued that awarding attorney's fees to defendants who wrongly invoked federal subject matter jurisdiction, against a plaintiff who successfully contested that jurisdiction, was inconsistent with Rule 11 and would violate Article III of the Constitution [R. 2: 189]. Following a hearing, the district court severed the Rule 11 issues, remanded the remainder of the case to the state trial court from which Coastal had improvidently removed it more than three years earlier [R. 11: 2-4], and awarded $19,307.00 in attorney's fees to Coastal as a Rule 11 sanction against Willy and Young, jointly and severally, citing *additional* instances of purported misconduct by Young that had not been specifically mentioned in the original order 29 months earlier.[6] Both

matter jurisdiction are empowered to award attorney's fees to defendants wrongly removing cases from state courts, do not support that proposition, although the second panel thought that "this conclusion is implicit in their broader holding." 915 F.2d at 967 n. 6 [A-52]. In those cases, which decided only issues of appellate jurisdiction, Rule 11 sanctions were sought against defendants who wrongly invoked federal subject matter jurisdiction by improvidently removing cases from state courts, not against a plaintiff who successfully contested removal jurisdiction. Apparently no federal appeals court has ever previously sustained an award of attorney's fees in the circumstances of this case.

[6] The previously unremarked violations were (i) Young's inclusion in a pleading of irrelevant and inflammatory allegations that previously had been stricken; (ii) Young's filing of responses to Coastal's motion to

the second sanctions order and the Fifth Circuit's summary affirmance of it ascribed all of the purported misdeeds to "Plaintiff" or "Willy," when it was actually Young who did them.[7] Willy's timely Rule 59 motion [R. 2: 57], reurging his arguments that Article III and Rule 11 precluded the attorney's fee award, was denied without opinion by the district court almost nine months later [R. 1: 5].

Willy filed a motion to stay the second sanctions order pending appeal, asserting in an accompanying affidavit that he had assets of less than $21,000.00 [R. 2: 63, 66]. Coastal did not contest that figure but instead argued that a stay should be denied because Willy had not shown his inability to borrow the money [R. 2: 24, 27-28]. Attached to Willy's application for stay were extracts from Coastal's 1988 annual report, establishing that the company and its operating subsidiaries in that year had revenues of more than $8 billion, profits of

dismiss that were "confusing, misleading, and not reasonably based on law or fact"; (iii) Young's allegation in a pleading that Coastal's counsel were engaged in an improper conflict of interest; (iv) Young's misquotation in a pleading of a Texas disciplinary rule; (v) Young's statement in open court that he intended to depose no less than 60 individuals in connection with the case; and (vi) Young's filing on Willy's behalf of a separate federal civil action "in an effort to harass Defendants in this case" [A-43, 44].

[7] For example, the order asserts that, "in a transcribed conference occurring during the course of this action, *Plaintiff* further evidenced *his* intent to harass Defendants by stating on the record that *he* intended to depose no less than 60 individuals in connection with this matter" (emphasis added) [A-44]. Young made this statement, not Willy [R. 10: 29].

more than $718 million, net earnings of more than $157 million, and total assets of almost $8 billion [R. 2: 69-75]. The district court denied the stay without opinion [R. 1: 6].

Willy again appealed.[8] Without oral argument, the Fifth Circuit summarily affirmed the sanctions award on the briefs, concluding that the district court possessed inherent power to award attorney's fees to Coastal as a Rule 11 sanction against Willy, even though the court never possessed Article III subject matter jurisdiction over the controversy at any stage of the proceedings, and even though Coastal, rather than Willy, wrongly invoked federal jurisdiction. The panel analogized this case to *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. ___, 110 S.Ct. 2447, 2456, 110 L.Ed.2d 359, 376 (1990), thinking it involved, not "a judgment on the merits of an action," but rather, like the imposition of costs, attorney's fees, and contempt sanctions, "the determination of a collateral issue: whether the attorney has abused the judicial process, and, if so, what sanction would be appropriate." 915 F.2d at 967 [A-51].[9]

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[8] Young did not appear in the district court following remand and did not appeal the second, modified sanctions order.

[9] The panel acknowledged Willy's argument that *Cooter & Gell* is not controlling because the Rule 11 attorney's fee award there was collateral to an Article III controversy over which the federal court properly exercised subject matter jurisdiction, invoked by the sanctioned attorneys, even though they dismissed the case under Rule 41(a), F.R.Civ.P., before the sanctions were imposed. Here, by contrast, the federal court never possessed Article III subject matter jurisdiction at *any* stage of the proceedings, and Willy, the sanctioned party, did not improperly invoke

The court also believed that the award of attorney's fees was not foreclosed by the defendants' wrongful removal of the action because Coastal acted in "good faith." Since there was at least "a colorable basis" for the district court's mistaken rejection of Willy's legally correct jurisdictional position, the panel reasoned that *Cooter & Gell* permits litigants and lawyers wrongly invoking federal jurisdiction to recover attorney's fees under a federal court's inherent power, even though the derelictions and award relate only to the merits of a controversy the court was never constitutionally empowered by Article III or by Congress to hear and decide in the first place. 915 F.2d at 967 and n. 7 [A-52].

Finally, affirming the "broad discretion" that *Cooter & Gell* accords to federal trial judges under Rule 11, the panel found no abuse of discretion in this case. Mistakenly stating that the first panel affirmed the original sanctions order when it actually *reversed* it,[10]

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such jurisdiction but instead repeatedly and successfully contested it. Nonetheless, the court found *Cooter & Gell's* "discussion of the collateral character of Rule 11 orders applicable in this context as well." 915 F.2d at 967 n. 5 [A-51].

[10] The first panel nullified the original sanctions order. "The sanctions order is therefore *reversed* and the matter of sanctions is remanded to the district court for further proceedings consistent with this opinion and *Thomas*." 855 F.2d at 1173 [A-38] (emphasis added). The panel's judgment recited that the sanctions order "is set aside" [R. 3: 224]. Inexplicably, the second panel held that the first panel "*affirmed* the award of Rule 11 sanctions," 915 F.2d at 966 [A-49] (emphasis added). Concluding that "we are bound by our prior decision *affirming* the district court's award of sanctions against both Willy and his attorney," 915 F.2d at

without disclosing that virtually all the supposed misbehavior attributed to Willy personally by the district court's orders and by the panel opinion had been committed by his lawyer, and without revealing that the revised sanctions order awarded attorney's fees for purported misconduct never specifically mentioned in the first order 29 months earlier, the panel summarily ratified the district court's implicit determination that, under all of the circumstances shown, the substantial monetary award favoring Coastal was appropriate and reasonable, in the sense demanded by Rule 11, and was the "least severe sanction adequate to [serve the] purpose" of the Rule. *Thomas*, 836 F.2d at 878.

Willy's petition for panel rehearing and suggestion for rehearing *en banc*, renewing his claims that the attorney's fees awarded against him were unauthorized by Rule 11 and violated Article III of the Constitution, were denied without opinion [A-56].

REASONS FOR GRANTING THE PETITION

1. The Fifth Circuit's unprecedented holding that a federal court never possessing subject matter jurisdiction has the inherent power to award attorney's fees to a defendant wrongly removing a case from a state court is in conflict with Article III of the Constitution and with decisions of this Court and other courts of appeals.

In Article III cases and controversies over which Congress has conferred the constitutional competence to

968 [A-54] (emphasis added), the court declined for that reason to consider or decide five issues presented by Willy's brief. Willy's petition for panel rehearing and suggestion for rehearing *en banc* both pointed out the error. The Fifth Circuit did not correct it.

act through a statutory grant of subject matter jurisdiction, federal courts "enjoy a zone of implied power incident to their judicial duty,"[11] including the inherent power to award attorney's fees for bad faith litigation.[12] The question here is whether a federal court is inherently empowered to award attorney's fees, in a case over which neither Article III nor Congress conferred subject matter jurisdiction, to those who wrongly removed the controversy from a state court, for time devoted to the merits of a dispute that should never have been considered or decided by a federal court in the first place. The Fifth Circuit's surprising, unprecedented answer stands squarely in conflict with Article III, with decisions of this Court and other courts of appeals, and with almost two centuries of federal judicial history.

Time and again since *Marbury v. Madison*, 1 Cranch 137 (1803), this Court's decisions have underscored the principle that questions of federal judicial power are constitutional questions, not simply procedural issues to be decided by resort to expediency, in whatever fashion

[11] *Nasco, Inc. v. Calcasieu Television and Radio, Inc.*, 894 F.2d 696, 702 (5 Cir. 1990), *cert. granted sub nom. Chambers v. Nasco, Inc.*, ___ U.S. ___, 111 S.Ct. 38, 112 L.Ed.2d 15 (1990). Although the "inherent power" issues on which the Court granted certiorari in *Chambers* resemble the questions presented here, this case presents them in an even more elementary posture. The United States district court in *Chambers* had subject matter jurisdiction, conferred by Congress, over an Article III case or controversy. The district court in this case did not.

[12] *Roadway Express, Inc. v. Piper*, 447 U.S. 752 (1980); *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240, 258-59 (1975); *F.D. Rich Co., Inc. v. United States ex rel. Industrial Lumber Co.*, 417 U.S. 116, 129 (1974).

best promotes efficient judicial administration or convenience. The Court repeatedly has stressed the simple but profoundly important proposition that federal courts are courts of limited rather than general jurisdiction,[13] restrained in the exercise of judicial power both by Article III of the Constitution and by the legislation of Congress. *Aldinger v. Howard*, 427 U.S. 1, 15 (1976). Because it would be an unconstitutional invasion of the province reserved to state courts for federal courts to act beyond constitutional and legislative constraints, the Court has adhered rigorously to the view that limitations on federal jurisdiction "must be neither disregarded nor evaded." *Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978). "Due regard for the rightful independence of state governments . . . requires that [federal courts] scrupulously confine their own jurisdiction to the precise limits which [Congress] has defined." *Healy v. Ratta*, 292 U.S. 263, 270 (1934).[14]

The validity of a federal court's order awarding

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[13] *E.g., Insurance Corp. of Ireland, Ltd. v. Compagnie Des Bauxites De Guinea*, 456 U.S. 694, 701 (1982).

[14] "For that reason, every federal court has a special obligation to 'satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review'." *Bender v. Williamsport Area School District*, 475 U.S. 534, 541 (1986), quoting *Mitchell v. Maurer*, 293 U.S. 237, 244 (1934). When a lower federal court lacks subject matter jurisdiction, this Court reviews the case "not [on] the merits but merely for the purpose of correcting the error of the lower court in entertaining the suit." *United States v. Corrick*, 298 U.S. 435, 440 (1936). *Cf.* Supreme Court Rule 14.1(i) ("If review of a judgment of a United States court of appeals is sought, the statement of the case shall also show the basis for federal jurisdiction in the court of first instance").

attorney's fees, like the validity of any of its other orders, "depends upon that court's having jurisdiction over both the subject matter and the parties."[15] Absent congressional authorization, a federal court lacking Article III subject matter jurisdiction has no inherent power to order the payment of fines, costs, fees, or expenses of litigation, even against parties wrongly invoking its jurisdiction.[16] Such an order must be reversed "in its entirety."[17]

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[15] *Insurance Corp. of Ireland, Ltd. v. Compagnie Des Bauxites De Guinea*, 456 U.S. 694, 701-02 (1982). *Compagnie Des Bauxites* draws a bright line between personal jurisdiction over parties to a federal controversy, which implicates no Article III concerns, and subject matter jurisdiction, which does. *See also United States Catholic Conference v. Abortion Rights Mobilization, Inc.*, 487 U.S. 72, 77 (1988).

[16] "If there were no jurisdiction, there was no power to do anything but to strike the case from the docket." *The Mayor v. Cooper*, 6 Wall. 247, 250-51 (1868); *Smyth v. Asphalt Belt Ry. Co.*, 267 U.S. 326, 330 (1925); *Lion Bonding & Surety Co. v. Karatz*, 262 U.S. 640, 642 (1923); *Citizens' Bank of Louisiana v. Cannon*, 164 U.S. 319, 324 (1896).

Even in cases within their subject matter jurisdiction, federal courts have no inherent power to award attorney's fees or costs, other than as a sanction. *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240 (1975); *Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437 (1987).

[17] *United States v. United Mine Workers*, 330 U.S. 258, 295 (1947) (civil contempt penalties for violation of temporary restraining order); *United States Catholic Conference v. Abortion Rights Mobilization, Inc.*, 487 U.S. 72, 76, 80 (1988) (civil contempt penalties for resistance to subpoena duces tecum in case over which district court exercised "colorable" jurisdiction); *United States v. Morton Salt Co.*, 338 U.S. 632, 642 (1950) (statutory civil penalties).

Congress did not empower the federal district court to act in this case by granting subject matter jurisdiction. A federal statute purporting to confer such competence would have violated Article III of the Constitution, because Willy's claims arose exclusively under state law, were asserted only against Texas defendants, and did not present a federal question.

Since the Federal Rules of Civil Procedure do not confer subject matter jurisdiction on federal courts, Rule 11 itself provides no source of judicial power.[18] Nor can it be maintained plausibly that a federal court's acknowledged collateral authority to award attorney's fees in a case that was once within its Article III jurisdiction, as in *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. ___, 110 S.Ct. 2447, 2456, 110 L.Ed.2d 359, 376 (1990), encompasses the entirely different situation in which a federal court was never constitutionally empowered to act in the first place, at *any* stage of the proceedings. Like pendent or ancillary jurisdiction,[19] an exercise of federal judicial power that is collateral to a federal case, as in *Cooter & Gell*, demands *some* sort of Article III jurisdiction at *some* point in the controversy. If federal subject matter jurisdiction never existed at all, at *any* stage of the proceedings before the federal court, an award of attorney's fees cannot be "collateral" to anything that Article III permits such a court to decide.

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[18] *Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365, 370 and n. 7 (1978); *Aldinger v. Howard*, 427 U.S. 1, 8-9 (1976); Rule 82, F.R.Civ.P.

[19] *Finley v. United States*, 490 U.S. ___, 109 S.Ct. 2003, 104 L.Ed.2d 593 (1989); *Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365 (1978); *Aldinger v. Howard*, 427 U.S. 1 (1976); *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966).

Finally, federal courts cannot invoke their acknowledged inherent power to award costs or attorney's fees, against those properly resisting the mistaken exercise of subject matter jurisdiction, when Article III competence to decide a federal case or controversy never existed at any stage of the proceedings. "The inherent powers of federal courts are those which 'are necessary to the exercise of all others'." *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 764 (1980), citing *United States v. Hudson*, 7 Cranch 32, 34 (1812). Inherent power under Article III "is not a broad reservoir . . ., ready at an imperial hand, but a limited source; an implied power squeezed from the need to make the court function."[20] Inherent and constitutional powers are correlative. If the Constitution and Congress never authorized a federal court to act in the first place, there can be no conceivable constitutional necessity to award a money judgment against litigants properly contesting federal subject matter jurisdiction, in favor of attorneys and litigants wrongly invoking it, to compensate them for time and expense devoted to the merits of a controversy *they* were responsible for wrongly inflicting on the federal courts. When subject matter jurisdiction is lacking, and Congress has not authorized recovery of fees or costs, the appropriate course is found, not in Rule 11 or in some confected "inherent power," but in Rule 12(h)(3)[21] or in

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[20] *Nasco, Inc. v. Calcasieu Television and Radio, Inc., supra*, n. 11, 894 F.2d at 702, citing *Roadway Express v. Piper, Link v. Wabash R. Co.*, and *United States v. Hudson.*

[21] "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action."

28 U.S.C. § 1447(c).[22]

Because a federal court always has jurisdiction to determine its own jurisdiction, *United States v. United Mine Workers*, 330 U.S. 258 (1947), lower federal courts have held that the filing of a legally or factually baseless complaint by a plaintiff, or petition for removal by a defendant, even one so frivolous that it fails to invoke federal subject matter jurisdiction, nevertheless is sanctionable under Rule 11 as an interference with the court's "jurisdiction to determine jurisdiction," because of the unwarranted imposition on judicial time and resources that results from such a filing.[23] Moreover,

[22] "If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded."

[23] See, e.g., *Szabo Food Service, Inc. v. Canteen Corp.*, 823 F.2d 1073, 1076-79 (7 Cir. 1987) ("silly" complaint or other improper imposition on federal court's time and resources sanctionable as interference with "jurisdiction to determine jurisdiction"); *Orange Production Credit Assn. v. Frontline Ventures Ltd.*, 792 F.2d 797, 800 (9 Cir. 1986) (filing of complaint "completely [lacking] a factual foundation for subject matter jurisdiction" sanctionable under Rule 11); *Muthig v. Brant Point Nantucket, Inc.*, 838 F.2d 600, 603 (1 Cir. 1988) (groundless complaint, followed by Rule 41(a) dismissal, sanctionable as misconduct committed during consideration of jurisdiction); *News-Texan, Inc. v. City of Garland*, 814 F.2d 216 (5 Cir. 1987) ((sanctions sought against defendant wrongfully removing case from state court)); *Johnson v. Smith*, 630 F. Supp. 1 (N.D. Cal. 1986) (same); *cf. Trohimovich v. Commissioner*, 776 F.2d 873, 875 (9 Cir. 1985) (appeal dismissed for lack of jurisdiction; appellant sanctioned for abusive tactics).

Wojan v. General Motors Corp., 851 F.2d 969 (7 Cir. 1988), a pseudo-diversity case cited in the panel opinion, involved

even in the absence of a congressional grant of subject matter jurisdiction, binding federal court orders may be issued "as necessary for the court to determine and rule upon its own jurisdiction, including jurisdiction over the subject matter."[24] The same principle permits Congress, consistently with Article III, to authorize by statute the award of costs and attorney's fees against those wrongly invoking federal jurisdiction.[25]

But entering a money judgment *in favor of* a party that wrongly invoked federal subject matter jurisdiction, *against* a party who properly contested it, and who did nothing to impede or obstruct the determination that it was lacking, is a fundamentally different matter. Recognizing an unprecedented "inherent" constitutional power to award attorney's fees in those circumstances makes no more sense than would a statute authorizing the recovery of attorney's fees and costs *against* plaintiffs

potential obstruction of jurisdiction to determine jurisdiction because the defendant's counsel waited more than five years to apprise the district court that there was no diversity. "[W]e are stunned that GM's counsel neglected to move for dismissal within a few weeks of the filing, much less waiting five and a half years." 851 F.2d at 975. It took Willy's counsel 18 *days*, over New Year's, to move for remand [R. 7: 1049].

[24] *United States Catholic Conference v. Abortion Rights Mobilization, Inc.*, 487 U.S. 72, 79 (1988), reiterating the *Mine Workers* doctrine.

[25] See, *e.g.*, 28 U.S.C. § 1919 (authorizing "payment of just costs" in any action or suit dismissed for lack of jurisdiction); 28 U.S.C. § 1447(c) (authorizing attorney's fees and costs for wrongful removal). Of course, Congress has never authorized the recovery of fees or costs *against* parties who prevail on jurisdictional grounds.

who succeed in having cases remanded to state court for lack of Article III jurisdiction, *in favor of* defendants wrongly removing them. Like the Fifth Circuit's holding in this case, such bizarre legislation would not merely be unwise as a matter of federal judicial policy. It would violate Article III of the Constitution as well.

The Eleventh Circuit's decision in *Davis v. Cluet, Peabody & Co.*, 667 F.2d 1371 (11 Cir. 1982) stands squarely in conflict with the Fifth Circuit on this point. The plaintiffs in *Davis*, like Willy in this case, had sued their former employer in a state court although, unlike Willy, they had alleged deprivation of a federal right. Like Coastal in this case, the employer wrongly removed the case to the federal court, asserting federal question removal jurisdiction. As in this case, the federal district court erroneously concluded it had jurisdiction, mistakenly denied the plaintiffs' motion to remand the case to the state court, and then dismissed the action on its merits, as a sanction for "plaintiffs' repeated refusal to follow federal and local procedural rules and court orders" with respect to the merits of the controversy. 667 F.2d at 1372.[26]

Finding no subject matter jurisdiction because the federal question presented was insubstantial, the Eleventh Circuit first considered whether "jurisdiction to determine jurisdiction" warranted affirming the district court's sanction of dismissal on the merits, rather than directing the remand of the case to the state court:

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[26] *Davis* was decided before the 1983 amendment of Rule 11.

> At oral argument the issue was raised as to whether we might uphold the district court's dismissal of the case for plaintiffs' misfeasance, despite the absence of subject matter jurisdiction, because the court's action was not actually on the merits. Because the district court has authority to consider the case pending a determination that it lacked subject matter jurisdiction and because while it is considering the case the parties must comply with procedural rules and court orders, one might argue that a court may dismiss a suit for a party's misfeasance though it ultimately determines that subject matter jurisdiction does not exist. 667 F.2d at 1373.

Correctly recognizing the Article III implications of its decision, Judge Frank Johnson's opinion for the court rejected that argument:

> [E]ven assuming that the court only dismissed for plaintiffs' misfeasance, we could not uphold such action in the absence of subject matter jurisdiction. The major portion of plaintiffs' actions that served as the basis for the court's order occurred *after* the motion to remand was denied and *most of the actions were not connected with the dispute over subject matter jurisdiction*. We do not find it appropriate here for the district court to have imposed the sanction of dismissal, thus disposing of the proceeding, even though it had no authority to rule on the merits in the first place. Such an act would 'work a wrongful extension of federal jurisdiction and give the district courts power the Congress has denied them.' American Fire & Cas. Co. v. Finn, 341 U.S. 6, 18, 71 S.Ct. 534, 542, 95 L.Ed. 702 (1951) (reversing entry of judgment after removal by court without jurisdiction). 667 F.2d at 1373 (emphasis added; footnote omitted).

The *Davis* court emphasized the circumstance, stressed by Willy in the courts below, "that we are not dealing here with the misfeasance of a party solely involving procedures connected with a court's determination of whether it has subject matter jurisdiction. The federal courts have jurisdiction to determine whether they have jurisdiction to hear a case . . ., and therefore have authority to sanction parties for misfeasance connected with the determination of whether jurisdiction exists." 667 F.2d at 1374 n. 8.[27] Willy was not sanctioned for interfering with the district court's determination of its jurisdiction. He was sanctioned for his purported interference with an unconstitutional exercise of federal judicial power over the merits of his case, against which he repeatedly protested from the very beginning to the bitter end.

The Fifth Circuit's decision in this case stands squarely in conflict with this Court's decisions, and with the Eleventh Circuit's holding in *Davis*, on this very elementary but profoundly important point of federal constitutional law. The Court should grant certiorari to resolve the conflict. Supreme Court Rule 10.1(a).

2. This case presents substantial, recurring questions involving the interpretation and application of Rule 11 that have not been, but should be, resolved by the Court.

Rule 11 by its terms authorizes "an appropriate sanction," including an award of "reasonable" expenses and attorney's fees "incurred because of" a violation of

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[27] See, *e.g.*, *United States v. Shipp*, 203 U.S. 563, 573 (1906), cited in *United States Catholic Conference v. Abortion Rights Mobilization, Inc.*, 487 U.S. 72, 79 (1988).

the Rule, against the person signing an offending pleading, motion, or other paper, a represented party, or both. After seven years of experience, lower federal court opinions provide little definitive guidance as to when, if at all, it is appropriate and reasonable to award attorney's fees as a Rule 11 sanction against a represented party, for supposed violations attributable exclusively to the conduct of counsel.[28] The award of attorney's fees against Willy for the purported misfeasance of his lawyer thus presents important questions of federal law that have not been, but should be, decided by this Court. Supreme Rule 10.1(c).

(i) Should Rule 11 be used to reward a party's wrongful invocation of federal subject matter jurisdiction? The court of appeals thought that "[t]o effect the goals of deterrence and punishment, Rule 11 must embrace the conduct of those who resist, as well as those who invoke, federal jurisdiction." 915 F.2d at 967 [A-52]. Surely, however, the policies underlying the Rule neither require nor permit a federal court to *reward* lawyers and litigants

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[28] Compare the sanctions order and summary appellate review in this case with, *e.g.*, decisions of the Second, Tenth, and Eleventh Circuits, holding that "the sanctioning of a party requires specific findings that the party was aware of the wrongdoing" and must take into account "relative fault." *White v. General Motors Corp., Inc.*, 908 F.2d 675, 685-86 (10 Cir. 1990); *Calloway v. Marvel Entertainment Group*, 854 F.2d 1452, 1474-75 (2 Cir. 1988), *rev'd in part on other grounds sub nom. Pavelic & LeFlore v. Marvel Entertainment Group*, 493 U.S. ___, 110 S.Ct. 456, 107 L.Ed.2d 438 (1989); *Donaldson v. Clark*, 819 F.2d 1551, 1560 (11 Cir. 1987) (en banc); see also *Eastway Construction Corp. v. City of New York*, 637 F. Supp 558, 569-70 (E.D.N.Y. 1986), *mod. on appeal*, 821 F.2d 121 (2 Cir. 1987), *cert. denied* 484 U.S. 918 (1987).

who wrongly file a jurisdictionally defective complaint or removal petition, by compensating them for fees and expenses they incur with respect to the merits of a case they have wrongly inflicted on the federal judiciary.

Such an approach is inconsistent with the Rule's primary purpose: to deter improper filings. "It is now clear that the central purpose of Rule 11 is to deter baseless filings in District Court and thus . . . streamline the administration and procedure of the federal courts." *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. ___, ___, 110 S.Ct. 2447, 2454, 110 L.Ed.2d 359, 374 (1990). The "baseless filing" that initiated this case was Coastal's own removal petition.

Rewarding lawyers and litigants who improperly invoke federal jurisdiction is essentially irrational. Although Coastal could not have prevailed in this litigation, its three lawyers were awarded more than $19,000.00 in attorney's fees for time devoted to preparing documents, conducting conferences, and attending hearings on the merits of a case that should never have been before the federal courts at all. Rather than deterring the filing of legally or factually baseless complaints and removal petitions, the Fifth Circuit's inversion of Rule 11 positively encourages them.

Moreover, Coastal's attorney's fees, in every meaningful sense, were incurred because of the company's improper imposition on the time and resources of the federal courts, as the result of the wrongful filing of its removal petition. Coastal's improvident removal of this case delayed its final disposition for years and inflicted significant harm on the federal system, on the state court, and on Willy himself.

The consequences were functionally indistinguishable from those resulting from the wrongful issuance of a federal injunction against state court proceedings.[29] More than five years after they were properly asserted in a state court, Willy's state claims still have not been resolved or even brought to trial.

(ii) Does Rule 11 permit an award of attorney's fees that effectively bankrupts a plaintiff before his claims are decided? Stressing the Rule's requirement that a sanction must be "appropriate," the Fifth Circuit said in *Thomas v. Capital Security Services, Inc.*, 836 F.2d 866, 878 (5 Cir. 1988) (en banc), that "the sanction imposed should be the least severe sanction adequate to the purpose of Rule 11," and should take into account "the conduct and resources of the party to be sanctioned." 836 F.2d at 881. The district court and the court of appeals ignored those principles in this case. Faced with the uncontested fact that Young's pleadings prompted the sanctions, and that the amount of the fee award approached the value of all of Willy's assets, the Fifth Circuit treated those circumstances as irrelevant and did not mention them in its opinion.

In view of Coastal's improvident removal, and the resulting delay in the final disposition of Willy's state claims, the conduct and resources of the *defendant* are no less relevant to an informed determination of whether monetary sanctions, imposed before the case is over, are appropriate and reasonable in the sense demanded by Rule 11. Coastal's assets are approximately 400,000 times greater than Willy's. When a multi-billion dollar corporation's wrongful invocation of federal jurisdiction

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[29] See 28 U.S.C. § 2283 (the Anti-Injunction Act).

inflicts significant and unwarranted financial burdens and years of delay on a plaintiff struggling to bring his claims to trial in the proper state court, there is no persuasive justification for gratuitously stacking the deck against him all over again.

(iii) Is a plaintiff strictly, vicariously liable for attorney's fees awarded because of his lawyer's supposed Rule 11 violations? Because Willy "voluntarily chose [Young] as his representative in the action," it might be argued that "he cannot now avoid the consequences of the acts or omissions of this freely selected agent. Any other notion would be wholly inconsistent with our system of representative litigation, in which each party is deemed bound by the acts of his lawyer-agent . . ." *Link v. Wabash Railroad Co.*, 370 U.S. 626, 633-34 (1962). The district court and court of appeals apparently took that view of the case, metaphorically attributing Young's supposed misdeeds to Willy personally, as though he had actually engaged in the conduct himself, without bothering to disclose that the behavior said to have been that of "plaintiff" or "Willy" actually was the conduct of his counsel.

Such an essentially fictional approach is fundamentally at odds with the Court's decision in *Pavelic & LeFlore v. Marvel Entertainment Group*, 493 U.S. ___, 110 S.Ct. 456, 107 L.Ed.2d 438 (1989), establishing that Rule 11 must be read literally to prescribe a standard of personal accountability, not strict, vicarious liability. In other contexts, it may be appropriate to attribute a lawyer's procedural defaults to his client, on a theory of agency, because important governmental interests of judicial economy, finality, and the orderly administration of justice could not otherwise be served. See, *e.g.*, *Irwin*

v. Veterans Administration, ___ U.S. ___[59 U.S.L.W. 4021, 4022 December 3, 1990] (client bound by lawyer's receipt of EEOC notice of right to sue); *Wainwright v. Sykes*, 433 U.S. 72 (1977) (client bound by lawyer's failure to object at trial); *Link v. Wabash Railroad Co.*, 370 U.S. 626 (1962) (client bound by dismissal resulting from lawyer's failure to appear before court). But holding a client strictly liable for attorney's fees supposedly generated by the objectively unreasonable behavior of his lawyer, when he was not personally involved in it, and when he may not even have been aware of it, does nothing to promote the Rule's announced objectives of deterrence and punishment. Automatically awarding attorney's fees as a Rule 11 sanction against clients does not deter or punish misbehavior by their lawyers.

Most importantly, Rule 11 focuses on the signing and filing of pleadings and other papers, rather than on an attorney's behavior generally.[30] If the client has not ratified an offending pleading or other document by signing it, he cannot be held vicariously liable under Rule 11. Adopting such a principle would be contrary to the Rule's policy of imposing strict liability and personal accountability only on the signer of a pleading, motion, or other paper.

The Court presently is considering whether, and in what circumstances, Rule 11's standard of "objective reasonableness" is applicable to litigants as well as to

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[30] Rule 11 "refers repeatedly to the signing of papers; its central feature is the certification established by the signature." *Oliveri v. Thompson*, 803 F.2d 1265, 1267 (2 Cir. 1986), *cert. denied sub nom. County of Suffolk v. Grasick*, 480 U.S. 918 (1987).

their attorneys. *Business Guides, Inc. v. Chromatic Communications Enterprises, Inc.*, 892 F.2d 802 (9 Cir. 1989), *cert. granted* ___ U.S. ___, 110 S.Ct. 3235, 111 L.Ed.2d 746 (1990). In *Business Guides*, however, the litigant itself purportedly had violated Rule 11 on at least two occasions "by failing to conduct a reasonable factual inquiry" with respect to papers its employees had prepared and signed for filing in the case. 892 F.2d at 812.

In this case, by contrast, virtually all of the attorney's fees awarded against Willy for supposed Rule 11 violations were attributable to the pleadings and other behavior of his lawyer. Willy was held liable, not for what he did, but for what his counsel did on his behalf.

The questions raised by this case are substantial, recurring, and deserving of review by this Court. A near-impecunious plaintiff, who never wanted to be in a federal court in the first place, was illegally abducted there from a state court, kicking and screaming, by an $8 billion corporate defendant that wrongly held him hostage for more than three years. Free at last, he now has been ordered to pay a $19,307.00 ransom that effectively bankrupts him after his kidnappers, claiming *they* were harmed, "nail" him[31] for supposed misconduct, attributed to him personally by the courts below, but actually committed by his lawyer. That bizarre, unprecedented, unconscionable result is irreconcilable with Article III of the Constitution, this Court's decisions, and the holdings of other courts of appeals. It cannot conceivably be "appropriate" or "reasonable" in any sense contemplated by Federal Rule 11.

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[31] This was the district court's expression [R. 10: 21].

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

Michael A. Maness
Counsel of Record
for Petitioner
1900 North Loop West
Suite 500
Houston, Texas 77018
(713) 680-9922

Donald J. WILLY, Plaintiff,

v.

The COASTAL CORPORATION, Coastal States Management Company, Inc., James R. Paul, George L. Brundrett, Charles F. Jones, William A. Dunker, and E.C. (Bud) Simpson, Defendants.

Civ. A. No. H-85-6947.

United States District Court,

S.D. Texas,

Houston Division.

Nov. 12, 1986.

MEMORANDUM AND ORDER OF DISMISSAL

HITTNER, District Judge.

Pending before the Court is Defendants' Motion to Dismiss (as to Plaintiff's alleged First Cause of Action for wrongful termination). Having considered the pleadings and the law applicable thereto, this Court is of the opinion that Defendants' Motion to Dismiss should be, and hereby is, GRANTED. It is therefore

ORDERED that Plaintiff's First Cause of Action, alleging wrongful termination, be DISMISSED pursuant to Fed.R.Civ.P. 12(b)(6) for failure to state a claim upon which relief can be granted. Furthermore, it is

ORDERED that Plaintiff's remaining pendant claims (Plaintiff's Second, Third, Fourth, and Fifth Causes of Action) be DISMISSED.

Plaintiff Willy complains via five alleged causes of action of his termination from employment as "in-house" counsel with Defendant Coastal Corporation. Willy worked for Coastal Corporation for over three years before he was fired on October 1, 1984. His legal advice concerned the company's compliance with various federal and state environmental laws.

Plaintiff's first cause of action alleges wrongful termination from his employment as an "in-house" attorney for the Defendant corporation. Plaintiff contends that he was fired because he "required the company to comply with the environmental laws. They objected to this requirement. I left the employment of the company involuntarily." Plaintiff's Petition for Removal, exhibit 1, Plaintiff's Original Petition, page 10. The Plaintiff does not allege, however, that he reported these alleged violations by his employer to any Federal Authority.[1] Nonetheless, this Court will not decide

[1] Plaintiff bases his allegations of illegal acts upon various federal statutes: the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § *9601 et seq.*; Safe Drinking Water Act, 42 U.S.C. § 201, 300f *et seq.*; the Clean Air Act, 42 U.S.C. § 7401 *et seq.*; and the Securities Act of 1933, 15 U.S.C. § 77a *et seq.* Many of these Acts provide statutory safeguards for retaliatory discharge, a protection the Plaintiff has sought via the United States Department of Labor in Case No. 85-CAA-1. The resolution of said complaint is not under review by this Court; however, this Court acknowledges the precedential case of *Brown & Root, Inc. v. Donovan*, 747 F.2d 1029 (5th Cir. 1984), in which the Fifth Circuit held that the retaliatory discharge protection of the Energy Reorganization Act does not protect internal activities such as disagreements over the conformance of reports with federal requirements. Absent contact with a competent organ of the government, the employee does not make out

whether the Defendant company ordered the plaintiff to commit an illegal act. The basis for dismissal rests upon another rationale.

The well-established standard to be used for dismissal for failure to state a claim upon which relief can be granted is "that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the Plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 101-02, 2 L.Ed.2d 80 (1957). The purpose of the Rule 12(b)(6) motion to dismiss is to test the law of the alleged claim, and not the facts allegedly supporting the claim. 5 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1356 (1969 & Supp.1986). The law at issue in Plaintiff's claim is the law of wrongful termination as it is developing in the State of Texas.[2]

Plaintiff has asked this Court to expand the Texas exception to employment-at-will to an attorney who believes he has been asked to violate the law. Indeed, the narrow public policy exception to employment-at-will adopted in *Hauck* encourages law enforcement.[3] An

a claim intended to protect a "whistle blower." *Brown & Root, Inc.*, at 1034-36.

[2] The Texas Supreme Court has only recently acknowledged the tort of wrongful termination but the Court did so for a very limited exception to the common law doctrine of employment-at-will. The public policy exception adopted is very narrow and "governs only the discharge of an employee for the sole reason that the employee refused to perform an illegal act." *Hauck v. Sabine Pilot Services, Inc.*, 687 S.W.2d 733, 735 (Tex.1985).

[3] *Hauck*, 687 S.W.2d at 735.

attorney, as an officer of the Court, often is placed in the dilemma of serving either his client's wishes or the law's demands. As legal practitioners are no doubt aware, the line is often not clear. Under these circumstances, however, the Texas Canons of Ethics and the Disciplinary Rules are the standard for an attorney's professional conduct. If an attorney believes that his client is intent upon pursuing an illegal act, the attorney's option is to voluntarily withdraw from employment. DR 2-110(C)(1)(c). When an attorney elects not to withdraw and not to follow the client's wishes, he should not be surprised that his client no longer desires his services. Once the client does elect to terminate the relationship, however, the attorney is required *mandatorily* to withdraw from any further representation of that client. DR 2-110(B)(4). The standard is the same for an in-house attorney.[4]

There is a well-established standard for professional conduct when an attorney finds himself in the situation as described by the plaintiff. Therefore, this Court does not believe that it is necessary or proper[5] to extend the *Hauck* public policy exception and does not find a cause of action for termination of an attorney's services to be within the exception to employment-at-will adopted by

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[4] *See, e.g.*, of application of the same standards of conduct to "in-house" attorneys, *UpJohn Co. v. United States*, 449 U.S. 383, 101 S.Ct. 677, 66 L.Ed.2d 584 (1981), and *Doe v. A. Corp.*, 709 F.2d 1043 (5th Cir.1983).

[5] Prior to the Texas Supreme Court's decision in *Hauck*, the Fifth Circuit for the Federal Courts had been asked but declined to delve into making exceptions to the employment at will doctrine as it existed in the common law of Texas. *See, e.g., Claus v. Gyorkey*, 674 F.2d 427, 433 (5th Cir.1982).

the Texas Supreme Court.

Additionally, this Court declines to maintain pendant jurisdiction over the remaining state law claims which allege breach of ethical duty, invasion of privacy, intentional infliction of emotional distress, blacklisting,[6] conspiracy, and intentional interference with business and contracts. The long-standing case authority on pendant jurisdiction is *United Mine Workers v. Gibbs*, 383 U.S. 715, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966). The general rule of *Gibbs* is to dismiss state claims, if the federal claims are dismissed before trial. *Gibbs* at 726, 86 S.Ct. at 1139, 16 L.Ed.2d at 228. In the exercise of its discretion in this area, the Court has considered the three prerequisites of *Gibbs*,[7] and finds there to have been little substance to the alleged Federal claim although sufficient to confer subject matter jurisdiction.[8] This case was originally filed in state court and removed by the Defendants based upon the assertion that the Plaintiff's

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[6] Tex.Rev.Civ.Stat.Ann. arts. 5196c and 5196d (Vernon Supp.1986).

[7] In *Gibbs*, the Supreme Court delineated three prerequisites to the exercise of pendant jurisdiction. First, "[t]he federal claim must have substance sufficient to confer subject matter jurisdiction on the court." Second, "[t]he state and federal claims must derive from a common nucleus of operative facts." Finally, the "plaintiff's claims are such that he would ordinarily be expected to try them all in one judicial proceeding . . . " *Gibbs* at 725, 86 S.Ct. at 1138, 16 L.Ed.2d at 227. *Also see, Ingram Corp. v. J. Ray McDermott & Co., Inc.*, 698 F.2d 1295, 1317-1320 (5th Cir.1983).

[8] The Plaintiff did object to the removal of this case from state court. However, another Judge of this Court in an order dated April 11, 1986, considered and denied that motion. This Court declines to look behind that order.

first cause of action would require, as an essential element of the action, construction or application of a federal statute. *Franchise Tax Board of California v. Construction Laborers Vacation Trust for Southern California*, 463 U.S. 1, 103 S.Ct. 2841, 77 L.Ed.2d 420 (1983); *Gully v. First National Bank*, 299 U.S. 109, 57 S.Ct. 96, 81 L.Ed. 70 (1936). In Plaintiff's first cause of action, unlawful conduct is an essential element. *Hauck* at 735. The unlawful conduct in this case requires interpretation of several Federal statutes.[9] Therefore, dismissal of the federal claim, which is extrapolated from a state cause of action, makes dismissal of the remaining pendant claims appropriate.

(Caption Omitted)

ORDER FOR SANCTIONS

Pending before this Court is Defendants' Motion for Sanctions. Having considered the pleadings with the reams of allegedly relevant supplemental material, the oral statements made on the record at hearings on August 18, 1986, and September 15, 1986, the Defendants' affidavits for attorneys fees, the Plaintiff's (Pro Se) Response to Defendants Affidavits in Support of Sanction, and the court rules and law applicable thereto, this Court is of the opinion that Defendants' Motion for Sanctions is well advised.

Under Fed. R. Civ. P. 11, an attorney's signature on a pleading certifies that the attorney has (1) read the pleadings and other papers submitted, (2) made a reasonable inquiry of the Plaintiff's Complaint to determine if it is well grounded in fact and warranted by

[9] *Supra*, note 2.

existing law or can make a good faith argument for extension of existing law, and (3) determined that the Complaint is not made in order to harass.

Plaintiff filed this suit in an apparent attempt to establish new law, at least as to one cause of action. Under such circumstances, the Court would expect Plaintiff, an attorney himself, and his counsel, to shed what light they could upon the issue in clear focus. Among the thousands of pages of pleadings and supplemental materials, Plaintiff did not illuminate the issue with any clarity, but rather chose to create a blur of absolute confusion. When the Plaintiff's attorney signed his 110-page brief in support of a Motion for Partial Summary Judgment, he made the Rule 11 certifications to this Court. Furthermore, Plaintiff asked and received permission of this Court to file what Plaintiff's attorney certifies to be appropriate and competent summary judgment evidence. What Plaintiff's attorney filed, however, was a 1,200-page, unindexed, unnumbered, foot-high pile of material which this Court is unable, after examination, to fathom and which is determined to be a conscious and wanton affront to the judicial process, this Court, and opposing counsel. This Court finds the submission and the Plaintiff's accompanying affidavit to this Court to be irresponsible at a minimum and at worst intentionally harassing. The material is generally incompetent hearsay, supported only by the Plaintiff's own conclusions and averments. *See Galindo v. Precision Am. Corp.*, 754 F.2d 1212, 1216 (5th Cir. 1985).

Unfortunately, the transgressions do not stop here. Plaintiff's response(s) to Defendants' Motion to Dismiss are also careless and confusing. For example, at page 4 of Defendants' Response to Plaintiff's Briefs Regarding

Defendants' Motion to Dismiss, the Plaintiff relies upon Rule 503 of the Federal Rules of Evidence. At the August 18, 1986, hearing, this Court asked Plaintiff to find Federal Rule of Evidence 503. Plaintiff could not. At the September 15, 1986, hearing, Plaintiff acknowledged that Rule 503 was never adopted by the United States Supreme Court. This is but an example of Plaintiff's and Plaintiff's counsel's careless pleading and a strong indication of intentional harassment.

The Court has spent enough time on this case to be sorely concerned with the actions of the Plaintiff and Plaintiff's counsel. The conduct of this suit has been inexcusable and can hardly be seen as a good faith attempt at making new law. It is therefore

ORDERED that Defendants' Motion for Sanctions be GRANTED. Plaintiff and Plaintiff's counsel, jointly and severally, are to pay $22,625 to the Defendants for the purpose of compensating the Defendants for the attorneys fees incurred in responding to Plaintiff's improper pleadings; in particular, Plaintiff's Motion for Partial Summary Judgment and Responses to Defendants' Motion to Dismiss. The $22,625 will be tendered to Defendants' attorney-in-charge on or before December 1, 1986. Proof of payment will be filed with the Court on or before December 1, 1986.

SIGNED at Houston, Texas, on this 12th day of November, 1986.

DAVID HITTNER
United States District Judge

Donald J. WILLY, Plaintiff-Appellant,

and

George A. Young,

Respondent-Appellant,

v.

The COASTAL CORP., Coastal States Management Co., Inc., et al.,
Defendants-Appellees.

No. 86-2992.

United States Court of Appeals,
Fifth Circuit.

Sept. 29, 1988.

Appeals from the United States District Court for the Southern District of Texas.

Before GARWOOD and JONES, Circuit Judges, and HUGHES,* District Judge.

GARWOOD, Circuit Judge:

Plaintiff-appellant Donald J. Willy (Willy) brought this action in the Texas courts seeking primarily to allege a wrongful discharge claim under *Sabine Pilot Service, Inc. v. Hauck*, 687 S.W.2d 733, 735 (Tex. 1985), or some extension thereof. He also asserted other related claims (such as defamation and blacklisting) under state law. Defendants-appellees removed the case to federal court on the basis of original federal question jurisdiction under

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* District Judge of the Southern District of Texas, sitting by designation.

28 U.S.C. §§ 1331, 1441, arguing that federal issues pleaded as a part of Willy's state wrongful discharge claim made this a federal case. The district court agreed and subsequently dismissed Willy's wrongful discharge claim for failure to state a claim upon which relief can be granted, Fed.R.Civ.P. 12(b)(6), treated Willy's remaining claims as pendent state claims and dismissed them under *United Mine Workers v. Gibbs*, 383 U.S. 715, 86 S.Ct. 1130, 1139, 16 L.Ed.2d 218 (1966), and ordered Willy and his attorney to pay $22,625 in attorneys' fees to defendants as a sanction pursuant to Fed.R.Civ.P. 11. We find that the district court lacked subject matter jurisdiction over the case, and that the amount of the Rule 11 sanctions is not adequately supported by the record and should be reconsidered in light of our opinion herein and the principles announced in *Thomas v. Capital Security Services, Inc.*, 836 F.2d 866 (5th Cir.1988). Accordingly, we reverse and remand.

Facts and Proceedings Below

Willy is a lawyer who was employed as in-house counsel from May 1981 until he was fired in October 1984 by defendant-appellee Coastal States Management Co., a wholly-owned subsidiary of defendant-appellee The Coastal Corporation. These entities (collectively, Coastal), are involved in the oil and gas industry through other subsidiaries of The Coastal Corporation. Willy claims that he was fired because he insisted that Coastal comply with various state and federal environmental and securities laws and because he would not act in violation of those laws.

Within a month of his dismissal, Willy filed an administrative complaint against Coastal with the United

States Department of Labor pursuant to 29 C.F.R. pt. 24 (1984). He argued that by firing him Coastal had violated the "whistleblower" provisions of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9610; the Clean Air Act, 42 U.S.C. § 7622; the Solid Waste Disposal Act, 42 U.S.C. § 6971; the Water Pollution Control Act, 33 U.S.C. § 1367; the Safe Drinking Water Act, 42 U.S.C. § 300j-9(i); and the Toxic Substances Control Act, 15 U.S.C. § 2622. The Department of Labor investigated and agreed. The Administrative Law Judge (ALJ) to whom Willy's case was assigned, however, found that Willy had engaged in only intra-corporate activity, not communications with a governmental agency, and recommended dismissal of Willy's claim under *Brown & Root Inc. v. Donovan*, 747 F.2d 1029 (5th Cir.1984) (the "whistleblower" provision of the Energy Reorganization Act, 42 U.S.C. § 5851(a)(3), does not protect an employee from filing an intra-corporate quality control report). On June 4, 1987, the Secretary of Labor (Secretary) rejected the ALJ's recommendation and remanded, finding from the record that Willy had been in contact with governmental agencies, presumably federal, before he was fired. The Secretary further "held" that *Brown & Root* was incorrectly decided and that this Court should be given an opportunity to reconsider its decision in light of *Kansas Gas & Electric Co. v. Brock, 780* F.2d 1505 (10th Cir.1985), *cert. denied*, 478 U.S. *1011*, 106 S.Ct. 3311, 92 L.Ed.2d 724 (1986), and *Mackowiak v. University Nuclear Systems*, 735 F.2d 1159 (9th Cir.1984). The present status of Willy's administrative action is not reflected by the record or briefs.

On November 22, 1985, after the ALJ's recommendation of dismissal but before remand by the Secretary, Willy filed this action in Texas state court, naming as defendants Coastal and several individuals associated with Coastal. He asserted claims for wrongful discharge, breach of the codes of ethics of the American and Texas bar associations, invasion of privacy, defamation, blacklisting, and interference with contractual and business relationships. Although Willy's complaint does not mention case law, he obviously attempted to plead his wrongful discharge action under *Sabine Pilot*, which established a Texas common law wrongful discharge action for at-will employees who have been fired for refusing to perform an illegal act, or some extension thereof. Willy alleged that he sought to cause his employer to comply with, and that he refused to engage in activity that assertedly would violate, state and federal environmental and securities laws, specifically naming the Clean Water Act (33 U.S.C. §§ 1251, *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901, *et seq.*), the Clean Air Act (42 U.S.C. §§ 7401, *et seq.*), the Safe Drinking Water Act (42 U.S.C. §§ 300f, *et seq.*), and the Solid Waste Disposal Act (42 U.S.C. §§ 6901, *et seq.*).[1]

On December 30, 1985, defendants removed the case to the United States District Court for the Southern District of Texas pursuant to 28 U.S.C. § 1441 on the

[1] In his state court pleading, Willy alleged only the names of these statutes, and did not otherwise state in his pleading any citation for the statutes he named; we have furnished the citations appearing in parentheses in the text. We, of course, imply no pleading requirement concerning case law or statutory citations.

basis of original federal question jurisdiction under 28 U.S.C. § 1331. They contended that federal question jurisdiction appears on the face of Willy's complaint because the federal statutes that Willy claimed he was fired for refusing to violate formed a necessary element of his *Sabine Pilot*-type claim. The district court agreed and denied Willy's initial motion to remand. Willy then moved for partial summary judgment and defendants moved to dismiss pursuant to Fed.R.Civ.P. 12(b)(6) and for sanctions pursuant to Fed.R.Civ.P. 11. Before the district court ruled on these motions, Willy twice more unsuccessfully moved for remand. On September 17, 1986, the district court denied Willy's motion for partial summary judgment and on November 12, 1986, dismissed Willy's *Sabine Pilot*-type action pursuant to Rule 12(b)(6), dismissed Willy's remaining pendent state law claims under *Gibbs*, 647 F.Supp. 116, and imposed Rule 11 sanctions in the amount of $22,625 jointly and severally against Willy and his attorney.[2] This appeal followed.

Discussion

Because the district court dismissed Willy's complaint for failure to state a claim pursuant to Rule 12(b)(6), *see Voter Information Project, Inc. v. City of Baton Rouge*, 612 F.2d 208, 210 (5th Cir.1980), and because we look to the well-pleaded complaint to determine subject matter jurisdiction, *see, e.g., Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. 1, 103 S.Ct. 2841, 2846, 77 L.Ed.2d 420 (1983), we accept as true for the

[2] After entering judgment on these orders, the district court entered a modified judgment, Fed.R.Civ.P. 60(b), that dismissed counterclaims pleaded by defendants.

purposes of this appeal Willy's factual allegations that are relevant to subject matter jurisdiction, *see Williamson v. Tucker*, 645 F.2d 404, 412 (5th Cir.), *cert. denied*, 454 U.S. 897, 102 S.Ct. 396, 70 L.Ed.2d 212 (1982). We note, however, that Willy's factual allegations are often imprecise. For instance, he discusses an episode where he sought to prevent changes in a report, but does not indicate whether the report was for purely intracorporate purposes. Similarly, a contact with a governmental agency is hinted at by a vague discussion of "actions" he took that "were the first legal step" in reporting to the Securities and Exchange Commission Coastal's noncompliance with environmental laws. Because we hold that the district court did not have subject matter jurisdiction over Willy's action under any reasonable construction of his state court pleading, we find it unnecessary to resolve these ambiguities. Thus, for purposes of this appeal, we will assume, *arguendo*, that Willy alleges that he was fired because he complied with and/or refused to violate federal and state environmental and federal securities laws and that his activities in this connection were not wholly intracorporate.[3]

I. Removal Jurisdiction

As a preliminary matter, we emphasize that the burden of establishing federal jurisdiction is placed upon the party seeking removal. *See Wilson v. Republic Iron & Steel Co.*, 257 U.S. 92, 42 S.Ct. 35, 66 L.Ed. 144 (1921). Moreover, removal jurisdiction raises significant federalism concerns, *see Merrell Dow Pharmaceuticals,*

[3] We do not, however, purport to decide these matters and in no way reach the substantive merits of Willy's claims.

Inc. v. Thompson, 478 U.S. 804, 106 S.Ct. 3229, 3233, 92 L.Ed.2d 650 (1986); *Franchise Tax Board*, 103 S.Ct. at 2846, and we must therefore strictly construe removal jurisdiction. *Shamrock Oil & Gas Corp v. Sheets*, 313 U.S. 100, 61 S.Ct. 868, 872, 85 L.Ed. 1214 (1941); *Powers v. South Central United Food & Commercial Workers Unions and Employers Health & Welfare Trust*, 719 F.2d 760, 762 (5th Cir.1983); *Butler v. Polk*, 592 F.2d 1293, 1296 (5th Cir.1979).

The right to remove a case from state to federal court derives solely from the statutory grant of jurisdiction in 28 U.S.C. § 1441, which provides in relevant part:

> "(a). . . any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending."[4]

See Finn v. American Fire & Cas. Co., 207 F.2d 113, 115 (5th Cir.1953), *cert. denied*, 347 U.S. 912, 74 S.Ct. 476, 98 L.Ed. 1069 (1954). Here, there is no allegation

[4] Section 1441(c) provides:

> "(c) Whenever a separate and independent claim or cause of action, which would be removable if sued upon alone, is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters not otherwise within its original jurisdiction."

of diversity of citizenship between the parties; therefore, the propriety of removal depends on whether the case falls within the provisions of 28 U.S.C. § 1331 that: "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

Section 1331 executes Article III, § 2, of the Constitution, which grants the federal courts the power to hear cases "arising under" the Constitution and federal statutes. Although section 1331 and Article III employ the same "arising under" language, the phrase does not have the same meaning in these different contexts. For constitutional purposes, the case arises under federal law whenever a federal question is an "ingredient" of the cause of action. *Osborn v. Bank of United States*, 9 Wheat. 22 U.S. 738, 822, 6 L.Ed. 204 (1824). Section 1331 "arising under" jurisdiction is more limited, however. *Merrell Dow*, 106 S.Ct. at 3232. *See Fabrique, Inc. v. Corman*, 813 F.2d 725, 725-26 (5th Cir 1987) (Supreme Court has rejected "ingredient" test for federal question jurisdiction). *See generally* 13B C. Wright, A. Miller, & C. Cooper, *Federal Practice and Procedure* § 3562 (2d ed. 1984) (hereinafter Wright & Miller).

The issue that we address in this case is whether the federal aspect of Willy's state cause of action brings his case within section 1331's "arising under" boundaries. Defining when a claim arises under federal law has drawn much attention but no simple solutions. *See Powers*, 719 F.2d at 763 & n. 1. *See also Superior Oil Co. v. Pioneer Corp.*, 706 F.2d 603, 605 (5th Cir.1983). Certainly the most often discussed feature of the "arising under" requirement, however, is the well-pleaded complaint rule: whether a claim arises under federal law must be

determined from the allegations in the well-pleaded complaint. *See generally* 13B Wright & Miller, § 3566 (2d ed. 1984). In cases removed to federal court, the plaintiff's well-pleaded complaint, not the removal petition, must establish that the case arises under federal law. *See Merrell Dow*, 106 S.Ct. at 3232; *Franchise Tax Board*, 103 S.Ct. at 2847. This rule requires the court to determine federal jurisdiction from only those allegations necessary to state a claim or, stated alternatively, a federal court does not have jurisdiction over a state law claim because of a defense that raises a federal issue, even if the plaintiff anticipates and pleads the federal issue in his complaint. *Franchise Tax Board*, 103 S.Ct. at 2846; *Gully v. First National Bank at Meridian*, 299 U.S. 109, 57 S.Ct. 96, 81 L.Ed. 70 (1936); *Louisville & Nashville R. Co. v. Mottley*, 211 U.S. 149, 29 S.Ct. 42, 53 L.Ed. 126 (1908) (case brought in federal court).

A. Jurisdiction Based on Federal Preemption

Under the well-pleaded complaint rule, federal preemption is generally a defensive issue that does not authorize removal of a case to federal court.[5] *See Powers*, 719 F.2d 764-65. However, in *Avco Corp. v. Aero Lodge No. 735, Int'l Assn. of Machinists*, 390 U.S. 557, 88 S.Ct. 1235, 1237, 20 L.Ed.2d 126 (1968), the Court tersely held that because state action for breach of collective bargaining agreements were preempted by section 301 of the Labor Management Relations Act of 1947 (LMRA), 29 U.S.C. §185, the federal court had

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[5] Prior to the amendments to the removal statute in 1887, a federal defense such as preemption could be the basis for removal jurisdiction. *Caterpillar, Inc. v. Williams*, ___ U.S. ___, 107 S.Ct. 2425, 2430, 96 L.Ed.2d 318 (1987).

removal jurisdiction.[6] In *Fanchise Tax Board*, 103 S.Ct. at 2853-54, the Court subsequently explained that because "the preemptive force of § 301 is so powerful as to displace entirely" state actions for breach of a collective bargaining agreement, any such action "is purely a creature of federal law, notwithstanding the fact that state law would provide a cause of action in the absence of § 301." The Court further stated: "*Avco* stands for the proposition that if a federal cause of action completely preempts a state cause of action any complaint that comes within the scope of the federal cause of action necessarily 'arises under' federal law." 103 S.Ct. at 2854.

Nonetheless, *Franchise Tax Board* refused to find federal question jurisdiction based on preemption of a state tax collection action by the Employee Retirement Income Security Act of 1974, 29 U.S.C. § *1001, et seq.* (ERISA).[7] The Court held that because the state's claims were not within the scope of section 502(a), which is ERISA's civil enforcement provision, they could not be removed to federal court. 103 S.Ct. at 2854-55. In other words, a federal action cannot be found to so completely

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[6] Although section 301 has been held to be an adequate jurisdictional grant, *see, e.g., Textile Workers Union v. Lincoln Mills of Ala.*, 353 U.S. 448, 77 S.Ct. 912, 915, 1 L.Ed.2d 972 (1957), the *Avco* Court found jurisdiction for cases preempted by section 301 under 28 U.S.C. § 1337, which grants federal jurisdiction in actions "arising under any Act of Congress regulating commerce." There is no distinction, however, between "arising under" standards for section 1337 and section 1331. *See Franchise Tax Board*, 103 S.Ct. at 2845 n. 7.

[7] The Court assumed ERISA preemption, but did not actually determine that question.

displace state claims that *Avco* applies unless there would have been a federal cause of action under the preempting federal law.[8] In fact, in *Merrell Dow*, which did not directly raise federal preemption as an issue, the Court held that

> "a complaint alleging a violation of a federal statute as an element of a state cause of action, when Congress has determined that there should be no private, federal cause of action for the violation, does not state a claim 'arising under the Constitution, laws, or treaties of the United States.' 28 U.S.C. § 1331." 106 S.Ct. at 3237.

In *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 107 S.Ct. 1542, 95 L.Ed.2d 55 (1987), the Court extended the *Avco* rule to a state action that is preempted by ERISA's civil enforcement provision, section 502(a). *See Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 107 S.Ct. 1549, 95 L.Ed.2d 39 (1987) (under section 514(a), section 502(a)(1)(B) completely preempts a state common law claim for improper processing of a claim submitted to an ERISA-qualified plan). In *Taylor*, unlike *Franchise Tax Board*, the claim was within the scope of ERISA's private cause of action. Furthermore, Congress had expressed an explicit intent for actions preempted by section 502(a) to arise under federal law in a "similar fashion to those brought under section 301." 107 S.Ct. at 1547-48. Because of these two

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[8] In *Avco* the plaintiff was denied the injunctive relief that it sought because of independent limits on federal jurisdiction at that time. The *Francise Tax Board* Court reasoned that the *Avco* plaintiff nevertheless had stated a claim that arose under section 301 of the LMRA. 103 S.Ct. at 2853.

factors, the Court found that the action arose under federal law. *Id.* at 1548. *See also Oneida Indian Nation v. County of Oneida*, 414 U.S. 661, 94 S.Ct. 772, 39 L.Ed.2d 73 (1974) (claim of right to possession of Indian lands asserts a purely federal right and claim therefore arises under federal law).

It is important to recognize that *Taylor* is a narrow extension of *Avco*, which itself represents a narrow exception to the rule that federal preemption is a defensive issue that does not authorize removal of a case to federal court. *Avco* was an action arising under section 301 of the LMRA. Because of the unique Congressional mandate for a uniform body of federal labor law under the LMRA, several broad preemption doctrines have evolved to protect this federal interest. *See, e.g., Vaca v. Sipes*, 386 U.S. 171, 87 S.Ct. 903, 17 L.Ed.2d 842 (1967) (preemption of state substantive law, but not state court jurisdiction, in breach of duty of fair representation claim); *Amalgamated Ass'n of Street, Electric Railway and Motor Coach Employees v. Lockridge*, 403 U.S. 274, 91 S.Ct. 1909, 29 L.Ed.2d 473 (1971) (jurisdiction of National Labor Relations Board over unfair labor practices preempts state and federal court jurisdiction); *Allis Chalmers Corp. v. Lueck*, 471 U.S. 202, 105 S.Ct. 1904, 1912-16, 85 L.Ed. 2d 206 (1985) (state tort action that is "inextricably intertwined with consideration of the terms of" a collective bargaining agreement is preempted by LMRA section 301). *But see Farmer v. United Brotherhood of Carpenters & Joiners*, 430 U.S. 290, 97 S.Ct. 1056, 1061-62, 51 L.Ed.2d 338 (1977) (discussing cases where state law is not preempted because the activity is only a "peripheral concern of the LMRA" or touches an interest "deeply rooted in local

feeling"); *Caterpillar, Inc. v. Williams*, ___ U.S. ___, 107 S.Ct. 2425, 2431, 96 L.Ed.2d 318 (1987) (section 301 does not preempt state breach of employment contract claim even though there was a collective bargaining agreement in place under which plaintiffs could have brought suit). In cases not implicating the LMRA, we have read the majority and concurring opinions in *Taylor* to require "manifest congressional intent" to make a preempted state claim removable to federal court. *See Beers v. North American Van Lines, Inc.*, 836 F.2d 910, 913 n. 3 (5th Cir.1988) (preemptive effect of Interstate Commerce Act).

Here, the federal laws[9] to which Willy explicitly refers as an aspect of his *Sabine Pilot*-type claim and the legislative history of those statutes indicate no intent, manifest or otherwise, that Avco should apply in this character of case. Thus, under *Taylor*, complete federal preemption or displacement cannot be a basis for removing Willy's case to federal court. In reaching this conclusion that complete federal preemption or displacement does not provide a basis for federal jurisdiction, we reiterate that we are not determining whether all or any of Willy's state wrongful discharge claim is preempted.[10]

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[9] Although occasionally mentioning federal securities laws, the parties have focused this appeal on the environmental laws.

[10] We note that state legislation is generally not preempted unless Congress has sufficiently evidenced (either expressly or inferentially through the comprehensiveness of the federal regulatory scheme) an intent to exclude all state regulation in the field or unless state law conflicts with federal law (either because

B. Jurisdiction Based on General "Arising Under" Principles

If complete displacement of state law cannot be the basis of federal question jurisdiction, does the presence of a federal aspect in Willy's state cause of action create federal jurisdiction? With the exception of state actions completely displaced by federal law, the plaintiff is generally "master to decide what law he will rely upon," *The Fair v. Kohler Die & Specialty Co.*, 228 U.S. 22, 33 S.Ct. 410, 411, 57 L.Ed. 716 (1913), and he "may avoid federal jurisdiction by exclusive reliance on state law." *Caterpillar*, 107 S.Ct. at 2429 & n. 7 (1987) (footnote omitted).[11] Here, of course, Willy in part relies upon

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compliance with both is impossible or because state law stands as an obstacle to the accomplishment of the full objectives of Congress). *See Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 104 S.Ct. 615, 621, 78 L.Ed.2d 443 (1984); *Osburn v. Anchor Laboratories, Inc.*, 925 F.2d 908, 911 (5th Cir.1987). The states, of course, are traditional partners with the federal government in the fields of securities and environmental regulation. And the *Sabine Pilot* remedy may sometimes in practice supplement but does not appear to directly conflict with any federal remedy. State remedies may, however, be preempted by federal ones in a given context. *See Atkinson v. Gates, McDonald & Co.*, 838 F.2d 808 (5th Cir.1988) (Longshore and Harbor Workers' Compensation Act preempts state law claim for bad faith refusal to pay benefits due thereunder); *LeSassier v. Chevron USA, Inc.*, 776 F.2d 506 (5th Cir.1985) (Louisiana law claim for wrongful discharge in retaliation for claim under Longshore and Harbor Workers' Compensation Act inconsistent with section 48a thereof for purposes of the Outer Continental Shelf Lands Act).

[11] In *Caterpillar*, the Court explained that the well-pleaded complaint rule makes plaintiff the master of his claim when he wishes to avoid federal jurisdiction. 107 S.Ct. at 2429. The plaintiff's mastery over his complaint gives

federal law and the question remains whether his case therefore arises under federal law.

One answer is found in Justice Holmes' test for federal question jurisdiction: "A suit arises under the law that creates the cause of action." *American Well Works Co. v. Layne & Bowler Co.*, 241 U.S. 257, 36 S.Ct. 585, 586, 60 L.Ed. 987 (1916). Federal jurisdiction is not shown by this test, for Willy alleges an asserted cause of action created by Texas Law.

> "However, it is well settled that Justice Holmes' test is more useful for describing the vast majority of cases that come within the district courts' original jurisdiction than it is for describing which cases are beyond district court jurisdiction. We have often held that a case 'arose under' federal law where the vindication of a right under state law necessarily turned on some construction of federal law, see, *e.g.*, *Smith v. Kansas City Title & Trust Co.*, 255 U.S. 180, 41 S.Ct. 243, 65 L.Ed. 577 (1921); *Hopkins v. Walker*, 244 U.S. 486, 37 S.Ct. 711, 61 L.Ed. 1270 (1917), and even the most ardent proponent of the Holmes test has admitted that

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way to the well-pleaded complaint rule when plaintiff attempts to choose a federal forum based on an anticipated federal defense. *Louisville & Nashville R.R. v. Mottley*, 211 U.S. 149, 29 S.Ct. 42, 53 L.Ed.2d 126 (1908). *See also Skelly Oil* Co. *v. Phillips Petroleum Co.*, 339 U.S. 667, 70 S.Ct. 876, 94 L.Ed. 1194 (1950) (no federal jurisdiction over plaintiff's federal declaratory judgment action because federal issue would be a defense in underlying damages or injunction action); *Lowe v. Ingalls Shipbuilding*, 723 F.2d 1173, 1179-83 (5th Cir.1984) (no federal jurisdiction for declaratory judgment as to whether federal statute preempts nonfederal claim).

it has been rejected as an exclusionary principle, see *Flournoy v. Wiener*, 321 U.S. 253, 270-272, 64 S.Ct. 548, 556-557, 88 L.Ed. 708 (1944) (Frankfurter, J., dissenting)." *Franchise Tax Board*, 103 S.Ct. at 2846.

Following *Franchise Tax Board*, we addressed federal question jurisdiction premised on vindication of a state right that "necessarily turned on some construction of federal law." In *Oliver v. Trunkline Gas Co.*, 796 F.2d 86, 88-89 (5th Cir.1986) (on petition for rehearing), we discussed the two cases cited in *Franchise Tax Board* for this proposition, *Smith v. Kansas City Title & Trust Co.*, 255 U.S. 180, 41 S.Ct. 243, 65 L.Ed. 577 (1921), and *Hopkins v. Walker*, 244 U.S. 486, 37 S.Ct. 711, 61 L.Ed. 1270 (1917). We read *Hopkins*, a suit to remove a cloud from title originating in a federal patent, as distinguishable from a seemingly inconsistent decision in a quiet title action, *Barney v. Kunkel*, 264 U.S. 16, 44 S.Ct. 254, 68 L.Ed. 539 (1924), based on traditional distinctions in the pleading requirements for these two actions. We thus found *Hopkins* to have "narrow" applicability. We read *Smith*, a shareholder suit to enjoin investment in bonds allegedly issued under an unconstitutional federal act, as irreconcilable with *Moore v. Chesapeake & Ohio Railway*, 291 U.S. 205, 54 S.Ct. 402, 78 L.Ed. 755 (1934). We found it unnecessary to resolve this dilemma, however, because in neither case did federal law provide a private remedy, and the recently rendered majority opinion in *Merrell Dow*, 106 S.Ct. 3229, required a federal remedy for the statute to be a basis for federal jurisdiction. The *Merrell Dow* Court found *Smith* and *Moore* reconcilable based on the "difference in the nature of the federal issues at stake."

106 S.Ct. at 3236 n. 12. *Merrell Dow* suggested that *Smith* challenged the constitutionality of an important federal statute, whereas *Moore* was simply a state tort action that incorporated a federal standard. *Merrell Dow*, 106 S.Ct. at 3236 n. 12.

Justice Cardozo formulated the other well-recognized test for determining when an action arises under federal law: "a right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff's cause of action . . . [and] must be such that it will be supported if the Constitution or laws of the United States are given one construction of effect, and defeated if they receive another." *Gully*, 57 S.Ct. at 97. In *Franchise Tax Board*, the Court then explained that the Holmes and Cardozo tests are alternative analyses, though the Court slightly altered the Cardozo essential element language and instead required the well-pleaded complaint to require "resolution of a substantial question of federal law." 103 S.Ct at 2848, 2856. *See also Fabrique, Inc.*, 813 F.2d at 726.

Defendants argue that the federal statutes to which Willy refers as a feature of his claim raise a substantial issue of federal law, as demonstrated by the private, federal remedy granted by those statutes. However, *Franchise Tax Board* only held that a case *might* arise under federal law when a state claim requires resolution of a substantial question of federal law, and we have interpreted the substantial question test to be a "narrow exception" to the rule that a suit "arises under the law that creates the cause of action." Oliver, 796 F.2d at 88. *Merrell Dow* recognizes "that the mere presence of a federal issue in a state cause of action does not automatically confer federal-question jurisdiction" and

cites with approval the passage from Justice Frankfurter's dissenting opinion in *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 77 S.Ct. 912, 928, 1 L.Ed.2d 972 (1957), defining the proper test as "the degree to which federal law must be in the forefront of the case and not collateral, peripheral or remote." *Merrell Dow*, 106 S.Ct. at 3235 & n. 11. While *Merrell Dow* held that a private, federal remedy was a necessary predicate to determining that the presence of a federal element in a state-created cause of action resulted in that cause of action being one which arose under federal law, it did not hold that the presence of any private, federal remedy would in all instances suffice for that purpose. See *Merrell Dow*, 106 S.Ct. at 3232 (no "single, precise definition" of section 1331 "arising under" jurisdiction), 3235 ("[f]ar from creating some kind of automatic test, *Franchise Tax Board* thus candidly recognized the need for careful judgments about the exercise of federal judicial power in an area of uncertain jurisdiction.").

Finally, because *Merrell Dow*, 106 S.Ct. at 3235, and *Franchise Tax Board*, 103 S.Ct. at 2852, relied heavily upon *Gully*, we return in conclusion to its frequently cited passage:

> "What is needed is something of that common-sense accommodation of judgment to kaleidoscopic situations which characterizes the law in its treatment of problems of causation. One could carry the search for causes backward, almost without end . . . . Instead, there has been a selective process which picks the substantial causes out of the web and lays the other ones aside. As in problems of causation, so here in the search for the underlying law. If we follow

> the ascent far enough, countless claims of right can be discovered to have their source or their operative limits in the provisions of a federal statute or in the Constitution itself with its circumambient restrictions upon legislative power. To set bounds to the pursuit, the courts have formulated the distinction between controversies that are basic and those that are collateral, between disputes that are necessary and those that are merely possible. We shall be lost in a maze if we put that compass by." 57 S.Ct. at 100.

Cf. Belknap, Inc. v. Hale, 463 U.S. 491, 103 S.Ct. 3172, 3177, 77 L.Ed.2d 798 (1983) (LMRA does not preempt state law where claim only of peripheral concern to LMRA and deeply rooted in local law); *Farmer*, 97 S.Ct. at 1561-62 (same).

Turning to Willy's complaint, we begin with the minimum requirement that the federal statutes involved provide a private, federal remedy. See *Merrell Dow*, 106 S.Ct. at 3234-37; *Oliver*, 796 F.2d at 89. But Willy does not claim that defendants violated the "whistleblower" provisions of the federal statutes.[12] Instead, he pleaded that he was fired for refusing to violate, or seeking to cause his employer to comply with, state and federal reporting requirements. Defendants have not argued that Congress has provided a private, federal cause of action for violation of these federal regulations. Furthermore, the "whistleblower" provisions expressly

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[12] The parties do not contend that there is a "whistleblower" provision in the securities law and we are aware of none.

limit the remedy to an administrative claim with the Secretary; therefore, the district court could not have exercised jurisdiction over Willy's claim if he had originally brought it in federal court under those provisions. See *In re Willy*, 931 F.2d 545, 546 (5th Cir.1987). Just as it would "flout" congressional intent to allow a federal court to exercise federal question jurisdiction over a removed claim for violation of a federal statute that does not provide a private cause of action, *Merrell Dow*, 106 S.Ct. at 3234-35, it would equally flout congressional intent to give the federal court original (and hence removal) jurisdiction based on statutes that limit the federal remedy to an administrative action.[13]

Assuming, however, that the "whistleblower" provisions meet the requirements of *Merrell Dow*, the federal element in Willy's *Sabine Pilot*-type claim is not substantial enough to confer federal question jurisdiction.

We note to begin with that Willy's wrongful discharge claim[14] was predicated on his alleged attempts to cause his employer to comply with, or his refusal to violate, state as well as federal environmental laws and federal securities laws. For example, Willy alleges that he "refused to permit Defendants to continue to operate in violation of the environmental laws of the federal and

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[13] We note that if Willy's activities were wholly intracorporate, *Brown & Root* would take his *Sabine Pilot* claim outside of the scope of the whistleblower provisions. This, however, would only strengthen our conclusion that the district court lacked subject matter jurisdiction.

[14] Willy's claims other than for wrongful discharge concededly involved no federal aspect.

state governments," that had he "permitted the Defendants to continue to operate in violation of the laws and regulations of the federal and state governments, he would have been in violation of the laws of the United States and the various states, and also not in compliance with the code of ethics governing the actions of lawyers in Texas," and that his

> "actions . . . also would have required Defendant Coastal . . . to report to the U.S. Environmental Protection agency any non-compliance with the laws and regulations of that agency, and to report to the respective state environmental agencies, any failure to comply with state law and regulations. Among the state agencies to which reporting would have been required was the Texas Department of Water Resources and the Kansas Department of Health and Environment."

He further alleged that "Defendant Coastal would have been required to report these conditions to the investment public and its shareholders in its SEC Form 10K and 10Q." While Willy did not expressly allege why he was fired, the plain inference from his pleading is that he was discharged because of his refusal to violate, or his insistence that his employer comply with, state as well as federal environmental laws and federal securities laws. Willy also alleged in connection with his wrongful discharge claim:

> "A contract for employment at will under the laws of the State of Texas prohibits discharge for compliance with the laws of the United States and the various states, including the State of

> Texas. All actions relevant to this cause of action undertaken by Donald J. Willy were to comply with the laws of the United States and the various states."

Thus, Willy's wrongful discharge claim was supported by alternate theories, first that his discharge was wrongful because it was on account of his attempt to cause employer compliance with or his refusal to violate federal law, and second that it was wrongful because it was on account of his attempt to cause employer compliance with or his refusal to violate state law. Nothing in Willy's state pleading or in the Texas common law as announced in *Sabine Pilot* or otherwise indicates that the first (federal law related) theory is necessary to Willy's wrongful discharge claim or that the second (state law related) theory is not sufficient of itself and without the first theory.[15]

In its recent decision in *Christianson v. Colt Industries Operating Corp.*, ___ U.S. ___, 108 S.Ct. 2166, 100 L.Ed.2d 811 (1988) the Court considered an analogous situation in determining whether a claim was one "arising under any Act of Congress relating to patents" for purposes of jurisdiction under 28 U.S.C. § 1338(a). The Court noted that resolution of this question was governed by the same principles that applied in determining

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[15] We do *not* determine that the facts pleaded by Willy are sufficient, under any theory, to state a claim under Texas law; we merely assume, *arguendo only*, that they are. Our point is that *if* they are, there is nothing in either the complaint or any Texas law source to indicate that the first (federal law related) theory is necessary to state a claim and that the second (state law related) is not alone sufficient to do so.

"arising under" jurisdiction for purposes of section 1331. *Christianson*, ___ U.S. at ___, 108 S.Ct. at 2172-74. It then announced that "a claim supported by alternative theories in the complaint may not form the basis for section 1338 jurisdiction unless patent law is essential to each of these theories," *id.*, and further explained:

> "The well-pleaded complaint rule, however, focuses on claims, not theories, see *Franchise Tax Board*, 463 U.S. at 26, and n. 29 [103 S.Ct. at 2855 and n. 29]; *Gully*, 299 U.S., at 117 [57 S.Ct. at 99-100], and just because an element that is essential to a particular theory might be governed by federal patent law does not mean that the entire monopolization claim 'arises under' patent law." *Id.* ___ U.S. at ___, 108 S.Ct. at 2175-76.

The *Christianson* Court proceeded to hold that neither of the two Sherman Act claims there involved, an attempted monopolization claim under section 2 and a group boycott claim under section 1, arose under the patent laws because "[t]he patent-law issue, while arguably necessary to at least one theory under each claim, is not necessary to the overall success of either claim." *Id.* The theory on which the plaintiff actually prevailed in the district court *was* the patent law theory as to each claim, *Id.*___ U.S. at ___, 108 S.Ct. at 2170-72, but the Court pointed out that the complaint *also* alleged alternative theories of recovery, not involving patent law, on each of the two claims. *Id.* ___ U.S. at ___, 108 S.Ct. at 2175-76. Hence, none of the claims met the section 1338 "arising under" requirement, and accordingly the suit was not one within the district court's section 1331 jurisdiction.

We conclude that the *Christianson* doctrine is properly applied to this case and results in the conclusion that Willy's wrongful discharge claim does not arise under federal law.

Our conclusion in this connection is strengthened by our view that the federal issues in Willy's claim are not ones in the forefront of the case, but are more collateral in nature, and are not substantial in relation to the claim as a whole, which is in essence one under state law. The Texas common law doctrine stated in *Sabine Pilot* is one intended to protect the rights of any employees, and whether the law that they are fired for refusing to violate is state or federal, environmental or otherwise, is wholly immaterial.[16] It is likewise immaterial to the Texas action whether the employee sought to aid a law enforcement agency or to bring to official cognizance violations committed by others. The federal "whistleblower" statutes, by contrast, promote *enforcement* of environmental laws by protecting employees who aid the government enforcement agency. Accordingly, in this Texas common law wrongful discharge case, the role of issues of federal law is more collateral than in the forefront.[17]

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[16] *Sabine Pilot* can be reasonably read as restricted to instances where the violations of law the employee refused to commit "carry criminal penalties." 687 S.W.2d at 735. But whether a wrongful discharge action of the *Sabine Pilot* variety will remain so limited by the Texas courts—a matter we do not decide—is an issue the resolution of which would not appear to be affected by whether the law in question is state or federal, environmental or otherwise.

[17] Just because a Sabine Pilot-type wrongful discharge action might lie in instances where a federal "whistleblower" administrative remedy would also be

Further, other issues of Texas law are substantially implicated in all theories of the wrongful discharge claim. In their motion to dismiss, defendants argued that Willy's ethical obligations as an attorney prohibited him from bringing this action. The Texas Code of Professional Responsibility, DR 2-110(B)(4), requires an attorney to withdraw when discharged by his client; DR 2-110(C)(1) allows an attorney to withdraw if his client intends to pursue an illegal course of action. Tex.Rev.Civ.Stat. Ann., Title 14 App., art. 12, § 8 (Vernon 1973). In either case, DR 4-101(C) prohibits an attorney from revealing confidences without permission except in limited situations not applicable here. Willy argues, on the other hand, that the attorney-client privilege does not allow Coastal to fire him illegally. Tex.Rev.Civ.Stat.Ann., Title 14 App., art. 12, § 8 (Vernon 1973). Thus, the primary legal issues in this

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available does not mean the former regulates the same subject matter as the latter. *Cf. Pilot Life Ins. Co.*, 481 U.S. 41, 107 S.Ct. 1549 at 1553-53, 95 L.Ed.2d 39 (Mississippi common law tort action for bad faith breach of contract, "the roots" of which "are firmly planted in the general principles of Mississippi tort and contract law" and under which "[a]ny breach of contract, and not merely breach of an insurance contract, may lead to liability for punitive damages," is not a law "which regulates insurance" within the exception to the preemptive provision of section 514(b)(2)(A) of ERISA "[e]ven though the Mississippi Supreme Court has identified its law of bad faith with the insurance industry"); *Mackey v. Lanier Collections Agency & Service, Inc.*, ___ U.S. ___, 108 S.Ct. 2182, 100 L.Ed.2d 836 (1988) (ERISA § 514(a) preempts Georgia statute specifically exempting from garnishment any employee benefit plan subject to ERISA, but does not preempt application of Georgia general garnishment statute to garnish benefit due employee under ERISA welfare benefit plan).

case will involve regulation of employment relationships and attorney conduct, both of which are areas deeply rooted in local interest. *See, e.g., Belknap*, 103 S.Ct. at 3183 (employment misrepresentation case). Resolution of these issues in defendants' favor could well mean that the federal issues would never arise.

We conclude that Willy's wrongful discharge claim is not one that "arises under" federal law for purposes of section 1331, and is hence not removable on that basis. We have previously concluded that possible federal preemption does not serve as a ground for removal here. There is no diversity. Accordingly, the district court erred in denying Willy's motion to remand, and the judgment below must be reversed with directions to remand the case to the state court. The only remaining issue is that of the Rule 11 sanctions against Willy and his attorney.

II. Rule 11 Sanctions

On the day that it dismissed Willy's action for failure to state a claim, the district court also awarded $22,625 in attorneys' fees to Coastal as a Rule 11 sanction. The district court viewed Willy's wrongful discharge claim as a legitimate attempt to establish new law, but found that instead of illuminating the issues, he chose to "create a blur of absolute confusion." The district court's primary concern was with a 110-page brief in support of Willy's motion for partial summary judgment. With this brief, Willy filed what the district court described as "a 1,200-page, unindexed, unnumbered, foot-high pile of material which this Court is unable, after examination, to fathom and which is determined to be a conscious and wanton affront to the judicial process, this Court, and opposing

counsel." The district court furthermore found that Willy's responses to defendants' motion to dismiss, in which Willy relied in part upon a federal rule of evidence that had not been adopted, were equally confusing. Willy argues both that sanctions were inappropriate and that the amount of the sanction was excessive.

We begin by noting that we and the district court retain jurisdiction over the Rule 11 aspect of this case, even though we have held that removal was improper. *See Vatican Shrimp Co. v. Solis*, 820 F.2d 674, 680 n. 7 (5th Cir.), *cert. denied*, ___ U.S. ___, 108 S.Ct. 345, 98 L.Ed.2d 371 (1987); *News-Texan, Inc. v. City of Garland, Texas*, 814 F.2d 216, 21820 (5th Cir.1987). As to the propriety of the district court's Rule 11 sanctions, we are guided by our recent en banc opinion in *Thomas v. Capital Security Services, Inc.*, 836 F.2d 866, 872-73 (5th Cir.1988), where we adopted an abuse of discretion standard of review. Our en banc opinion in *Thomas* was issued after the case was appealed, and the district court, of course, did not have the benefit of it when imposing sanctions. Under *Thomas*, compliance with Rule 11 is generally judged by an objective standard of reasonableness. *Id.* at 873. Once a district court finds a Rule 11 violation, it must impose *some* sanction. *Id.* at 876. The district court retains broad discretion in fashioning an "appropriate" sanction; however, the sanction imposed should be the least severe that adequately furthers the purposes of Rule 11. *Id.* at 876-78. Reasonable and appropriate expenses, including attorneys' fees, may be awarded as a Rule 11 sanction to the extent that the expenses were reasonably caused by a violation of Rule 11. *Id.* at 878. Actual expenses and attorneys' fees are not necessarily reasonable: "A party

seeking Rule 11 costs and attorney's fees has a duty to mitigate those expenses, by correlating his response, in hours and funds expended, to the merit of the claims." *Id*. at 879. Moreover, not all such expenses and fees so caused need be awarded. See *Smith International, Inc. v. Texas Commerce Bank*, 844 F.2d 1193, 1197 (5th Cir. 1988).

Here, the district court clearly did not abuse its discretion in determining that Willy had violated Rule 11. Filing mountainous piles of unorganized documents and citing to nonexistent rules of law are precisely the sort of conduct that, under the objective test of Rule 11, could lead a district court to conclude that the attorney had not made reasonable inquiry into the law or was seeking to harass or delay. And the district court pointed out that its list of conduct that violated Rule 11 was not meant to be comprehensive. As Coastal argued in its motion for sanctions below and on appeal now, Willy's briefs below contain other misleading citations of law.

Turning to the sanction imposed, we find the type of sanction appropriate but that the amount of and basis for the sanction must be reconsidered by the district court in light of the standards set out in *Thomas*. Sanctions may be awarded jointly and severally against the client and his attorney, *see Robinson v. National Cash Register Co.*, 808 F.2d 1119, 1131 (5th Cir. 1987); *Southern Leasing Partners Ltd. v. McMullan*, 801 F.2d 783, 789 (5th Cir.1986), and a joint and several award *may* often be appropriate where, as here, the client is an attorney. Among other things, the court must determine whether its substantial award satisfied the requirement that the fees must have been reasonably incurred *as a result of* a violation of Rule 11 and in light of the duty to

mitigate. *Thomas*, 836 F.2d at 878. Defendants submitted affidavits from two law firms: one sought reimbursement for 442 hours at $100 per hour ($44,200) and $2,639 in expenses; the other firm sought reimbursement for 307 hours at $125 an hour ($38,325). Neither firm submitted sufficiently detailed information from which the district court could determine what portion of these fees and expenses were incurred because of Rule 11 violations. Nor did the district court explain how it derived from these amounts its figure of $22,625. As we stated in *Smith* International, 844 F.2d at 1197:

> "While *Thomas* adopted 'a rule . . . that does not require specific findings and conclusions by a district court in all Rule 11 cases,' nevertheless we there held that where 'the basis and justification for the trial judge's Rule 11 decision is not readily discernible' some explanation is ordinarily required, though 'the degree and extent to which specific explanation must be contained in the record will vary according with the particular circumstances of the case, including the severity of the violation, the significance of the sanctions, and the effect of the award.' *Id*. [*Thomas*] at 883. 'If the sanctions imposed are substantial in amount'—as they clearly are here—then 'appellate review of such awards will be inherently more rigorous' and 'such sanctions must be quantifiable with some precision.' *Id. [Thomas]*."

Here the sanctions are clearly substantial in amount and the district court's orders in reference to the amount thereof do not meet the foregoing requirements.

The sanctions order is therefore reversed and the matter of sanctions is remanded to the district court for further proceedings consistent with this opinion and *Thomas*.[18]

CONCLUSION

We hold that this case was improvidently removed and that the district court lacked subject matter jurisdiction over it (except as to Rule 11 sanctions). Accordingly, the judgment below is reversed and remanded to the district court with directions to remand the cause, except for the matter of sanctions, to the state court. We likewise set aside the district court's sanctions order, and that phase of the case is remanded to the district court for further proceedings consistent herewith.

REVERSED AND REMANDED.

HUGHES, District Judge, dissenting in part:

Although I join fully the jurisdictional decision and reasoning, I cannot concur in the portion of the opinion that remands the award of sanctions for further findings.

The process of imposing sanctions has three steps. First, the respondent must be given notice of the abuse for which sanctions are sought. Second, he must have an opportunity to be heard in response. Third, the abuse and the imposition must be supported by the record. The only issue here is the third step, the quantification of the monetary sanction. The majority confuse whether the record supports the findings with whether there are

[18] We also note that "Rule 11 does not apply to conduct that occurred in state court before removal." *Foval v. First National Bank of Commerce in New Orleans*, 841 F.2d 126, 130 (5th Cir.1988).

sufficient findings.

The record is not limited to the trial judge's recitations. *Ferguson v. Hill*, 846 F.2d 20 (5th Cir.1988). Failure to articulate the process of the evidence evaluation does not undermine the trial court's judgment. The quantification required some evidence and an answer finding the appropriate level of compensation. If it were a jury issue, the question on appeal would be whether the one answer had sufficient evidence in the record to support the amount.

The testimony that is in the record consists of affidavits from the defendants' lawyers describing in some detail and some generality the time and efforts expended in the whole case. The fee total was $82,575. The trial court did not accept that evidence uncritically; he obviously discounted it by about 83%, awarding $22,625. The record is more than the fee affidavits and the judge's findings. Fed.Rule of App.Pro. 10(a). We must presume that the trial court considered the course of the litigation represented by the pleadings, motions, hearings, docket entries, briefs, and other filed papers.

Although the abuses of the plaintiff and his counsel were pervasive, the record is weak on causation, but just because I would find the amount resulting from the abuses to be a lot less does not amount to an absence of either sufficiently specific findings or of evidence in the record itself. *Anderson v. City of Bessemer*, 470 U.S. 564, 576, 105 S.Ct. 1504, 1513, 84 L.Ed.2d 518 (1985).

The people on whom the sanction was imposed here were content to leave the record in the state we find it. It supports the judgment. They were under a duty to contradict the evidence of amount and to supply evidence

of justification. They did not. This case involves neither a default nor unrepresented parties, which would be instances that may require a trial or appellate judge to use a vigorous skepticism.

On appeal, our choices are limited: If we cannot hold that the value was clearly erroneous on the evidence, we are obliged to affirm.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DONALD J. WILLY,

Plaintiff,

V. CIVIL ACTION
NO. H-85-6947

THE COASTAL
CORPORATION,
et al.,

Defendants.

ORDER FOR SANCTIONS

Pending before this Court is Defendants' Motion for Sanctions.

In December, 1985, Defendants, on the basis of federal question jurisdiction, removed to this Court an action filed by Plaintiff, Donald J. Willy. After numerous pleadings and no less than four hearings or conferences, this Court, on November 12, 1986, granted Defendants' Motion to Dismiss Plaintiff's claims of wrongful discharge. In the same Order, the Court simultaneously

dismissed Plaintiff's remaining claims for lack of pendent jurisdiction. On that same date, the Court also granted a Motion for Rule 11 Sanctions filed by Defendants. In its separate sanction order, the Court found that Plaintiff (who is himself an attorney) and his former attorney, George A. Young, had committed multiple violations of Rule 11. Examples of improper conduct cited by the Court included Plaintiff's repeated oral and written citation of a nonexistent rule of evidence, Plaintiff's filing of confusing and misleading pleadings, his misleading misquotation of an applicable disciplinary rule, and, most notably, his filing of a 120-page Motion for Summary Judgment that was accompanied by some 1200 pages of unnumbered, unindexed, and largely irrelevant documents, which were purportedly rendered admissible by a wholly inadequate affidavit. As the result of this conduct, the Court, after the receipt of a generalized statement of attorneys' fees submitted by Defendants, ordered Plaintiff and his former counsel to pay to Defendants attorneys' fees in the amount of $22,625.

Plaintiff appealed both orders of this Court to the United States Court of Appeals for the Fifth Circuit. On September 29, 1988, the Fifth Circuit issued a lengthy opinion wherein it found that this Court had lacked removal jurisdiction over Plaintiff's claims and that those claims should therefore be remanded to the state court in which they were initially filed. *Willy v. Coastal Corp.*, 855 F.2d 1160 (5th Cir. 1988). Notwithstanding this finding, the Fifth Circuit also concluded the following: (1) that this Court properly found that Plaintiff and his former counsel had violated Rule 11 and (2) that this Court properly imposed a joint and several award of attorneys' fees against them. *Id.* at 1172-73. The Fifth Circuit

found that the transgressions of Plaintiff and his former counsel were "precisely the sort of conduct" to which Rule 11 applies. *Id.* at 1172. The Court of Appeals further found expressly that the type of sanction imposed by this Court, *i.e.*, attorneys' fees, was appropriate in this case. *Id.* Because the Fifth Circuit was unable to discern from the record the precise calculations by which this Court reached the amount of its sanction award or the extent to which attorneys' fees were the result of Plaintiff's Rule 11 violations, the Fifth Circuit remanded the Rule 11 issue to this Court for further proceedings in accordance with the decision in *Thomas v. Capital Security Services, Inc.*, 836 F.2d 866 (5th Cir. 1988).[1] Thus, the only issues resubmitted to this Court for further consideration pertain to "the amount of and basis for the sanction" to be imposed. *Id.*

First, this Court will discuss "the amount of and basis for the sanction." It is noted by this Court that the Fifth Circuit did *not* rule that the amount of the sanction initially imposed by this Court was excessive or inappropriate, but directed this Court to evaluate that amount in accordance with the guidelines in *Thomas*. *Willy* at 1173. Additionally, the Fifth Circuit *did* not rule that this Court was incorrect in finding that the conduct by Willy and his counsel was an appropriate ground or basis for sanctions. *Id.* at 1172. The Circuit Court did, however, state the following: (1) that the attorneys' fees "must have been reasonably incurred *as a result of* a violation of Rule 11 and in light of the duty to mitigate" and (2) that the affidavits supporting the fees were

[1] The Honorable Lynn Hughes, sitting by designation, dissented from the remand of this Court's Rule 11 Order, and would have affirmed that Order in its entirety.

insufficient. *Id.* at 1173. Thus, this Court will examine: (1) the basis for, or causal relationship between, the fees and the sanctions to be imposed and (2) the basis or the quantification of the fees.

Under Fed.R.Civ.P. 11, an attorney's signature on a pleading, motion, or other paper certifies that the attorney has (1) read the pleadings and other papers submitted, (2) made a reasonable inquiry of the basis for the document to determine if it is well grounded in fact and if it is warranted by existing law or makes a good faith argument for the extension of existing law, and (3) determined that the document is not made in order to harass, to cause unnecessary delay, or to increase needlessly the cost of litigation. Any sanction imposed pursuant to Rule 11 should be the least severe sanction that adequately furthers the purpose of Rule 11. *Willy*, 855 F.2d at 1172 (citing *Thomas*, 836 F.2d at 876-78). "*Thomas* does not require that the 'least severe sanction' be imposed, rather that the 'least severe sanction adequate to serve the purpose' of Rule 11 be imposed." *Harmony Drilling Co. v. Kreutter*, 846 F.2d 17, 19 (5th Cir. 1988).

In addition to the violations of Rule 11 previously mentioned, Plaintiff and his counsel engaged in the following conduct that was violative of Rule 11:

a. Plaintiff reinserted in a subsequent pleading allegations which had been previously stricken by the Court as irrelevant and inflammatory;

b. Plaintiff filed responses to Defendants' Motion to Dismiss which were confusing, misleading, and not reasonably based on law or fact;

c. Plaintiff, without a reasonable basis in law or fact, asserted in a response to Defendants' Motion to Dismiss that Defendants' counsel, the law firm of Looper, Reed, Ewing & McGraw, was engaged in an improper conflict of interest;

d. in a pleading, Plaintiff misquoted Disciplinary Rule 2-110(B)(4) of the Texas Code of Professional Responsibility, and then proceeded in that pleading to discuss the Disciplinary Rule as though the language he had omitted did not exist;

e. in an effort to harass Defendants in the instant proceeding, Plaintiff filed an action against some 80 officers, directors, employees, affiliates, and attorneys of the corporate Defendants, wherein he alleged that those individuals, by engaging in the actions which are the subject of the instant proceedings had violated the Racketeering Influenced and Corrupt Organizations (RICO) Act; and

f. in a transcribed conference occurring during the course of this action, Plaintiff further evidenced his intent to harass Defendants by stating on the record that he intended to depose no less than 60 individuals in connection with this matter.

In addition, the Court finds that Plaintiff and his counsel had sufficient and repeated notice that they were acting in violation of Rule 11. Specifically, the Court finds as follows:

a. in open court on August 18, 1986, and in a

responsive pleading dated August 12, 1986, Defendants pointed out to Plaintiff and his counsel that their citation of Rule 503 of the Federal Rules of Evidence was improper;

b. in open court on August 18, 1986, and in a responsive pleading dated September 9, 1986, Defendants objected to Plaintiff's filing of the mass of exhibits that accompanied his Motion for Partial Summary judgment on the grounds that such exhibits were improper;

c. in responsive pleadings dated August 12, 1986, Defendants pointed out to Plaintiff and his counsel that their Briefs in Response to Defendants' motion to Dismiss were improper;

d. in open court on August 18, 1986, and in a responsive pleading dated August 12, 1986, Defendants pointed out to Plaintiff and his counsel that they had misquoted Disciplinary Rule 2-110 (b) (4);

e. in a responsive pleading dated August 12, 1986, Defendants pointed out to Plaintiff and his counsel that they had improperly reinterjected in a subsequent pleading language that had previously been stricken from their Complaint by this Court;

f. in a responsive pleading dated August 12, 1986, Defendants pointed out that Plaintiff and his counsel had improperly asserted that a conflict of interest existed on the part of the law firm of Looper, Reed, Ewing & McGraw;

g. by letter dated March 26, 1986, Plaintiff and

his counsel were advised that their proposed filing of an action against additional defendants, including Defendants' counsel, was improper; and

h. on several occasions, James L. Reed, counsel for Defendants, verbally advised Plaintiff's counsel that positions taken by Plaintiff, including those involving the miscitation of DR 2-110(b)(4) and Rule 503, were not well grounded.

Based upon the foregoing, the Court finds that Defendants incurred at least the following attorneys' fees as a direct and proximate result of the Rule 11 violations previously listed and that Defendants acted reasonably in attempting to mitigate expenses as the result of the Rule 11 violations :

a. The law firm of Looper, Reed, Ewing & McGraw performed work in response to Plaintiff's Rule 11 violations in the amount of at least Thirteen Thousand Ninety Dollars ($13,090).

b. The law firm of Ford & Harrison performed work in response to Plaintiff's Rule 11 violations in the amount of at least Six Thousand Two Hundred Seventeen Dollars ($6,217).

By way of comparison, Plaintiff filed an affidavit with this Court indicating he had incurred attorneys' fees in excess of Forty Thousand Dollars ($40,000) in the preparation of the Motion for Summary Judgment, Brief, and supporting documents. The sanctions which this

Court will impose will be the total of the expenses of Defendants' fees incurred as a result of the Rule 11 violations, i.e., $19,307. It is therefore

ORDERED that Defendants' Motion for Sanctions be GRANTED. Plaintiff and Plaintiff's counsel at the time, George A. Young, jointly and severally, are to pay Nineteen Thousand Three Hundred Seven Dollars ($19,307) to the Defendants for the purpose of compensating the Defendants for the attorneys' fees incurred in responding to the aforementioned Rule 11 violations. The Nineteen Thousand Three Hundred Seven Dollars ($19,307) will be tendered to Defendants' attorney-in-charge on or before May 1, 1989. Proof of payment will be filed with the Court on or before May 1, 1989.

SIGNED at Houston, Texas, on this 17th day of April, 1989.

DAVID HITTNER
United States
District Judge

Donald J. WILLY, Plaintiff-Appellant,

v.

The COASTAL CORPORATION, et al.,

Defendants-Appellees.

No. 90-2097

Summary Calendar.

United States Court of Appeals,

Fifth Circuit.

Oct. 26, 1990.

Appeal from the United States District Court for the Southern District of Texas.

Before KING, GARWOOD, and DUHE, Circuit Judges.

DUHE, Circuit Judge:

The appellant Donald Willy challenges the district court's imposition of sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure. Willy contends the district court lacked jurisdiction to impose these sanctions, and that they are excessive and unreasonable. Finding no merit in these contentions, we affirm.

Facts and Proceedings Below

Willy, a Houston attorney, filed suit in state court against Coastal, his former employer, alleging that his discharge was in violation of Texas law prohibiting retaliatory firing. Coastal removed asserting that federal employment statutes constituted an essential element of Willy's claim. Willy moved to remand, challenging the basis for federal question jurisdiction. In response to

Coastal's 12(b)(6) motion to dismiss the case, Willy filed a 110-page motion for summary judgment and submitted 1200 pages of unindexed, unorganized supporting material. After two separate hearings, the district court granted Coastal's 12(b)(6) motion for dismissal of the federal claims, dismissed the state law claims for lack of pendant jurisdiction, and granted Coastal's motion for Rule 11 sanctions against Willy and his attorney.

On appeal, this court ruled that the suit was improvidently removed and remanded the matter to the state court in which the action was initially filed.[1] However, we affirmed the award of Rule 11 sanctions and remanded the case to the district court for further proceedings in accordance with this court's intervening decision in *Thomas v. Capital Security Services, Inc.*, 836 F.2d 866 (5th Cir.1988) (en banc).[2]

On remand, the district court concluded that Willy and his attorney should be assessed $19,307 in Rule 11 sanctions.[3] The district court further ruled that Coastal

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[1] *See, Willy v. Coastal Corp.*, 855 F.2d 1160 (5th Cir.1988) *(Willy I)*.

[2] This court concluded that remand was necessary because it could not discern the basis upon which the district court had calculated the appropriate amount of sanctions.

[3] These sanctions were imposed for the filing of misleading and ill founded pleadings, the use of the discovery process to harass opposing parties, repeated references to non-existent disciplinary and evidentiary rules, baseless allegations of conflicts of interest, and the filing of the infamous 110-page summary judgment motion accompanied by reams of irrelevant and unorganized material.

and the other defendants had repeatedly notified Willy and his attorney of their transgression to no avail. Willy filed a Rule 59 motion for relief from this judgment, which was denied. This appeal followed.

Rule 11 Jurisdiction

Willy contends that because the district court lacked subject matter jurisdiction over the merits of his claim, it was similarly without jurisdiction to impose Rule 11 sanctions. He argues that Rule 11 does not confer its own jurisdiction, and federal courts possess no "inherent power" to impose sanctions when subject matter jurisdiction is lacking. We reject this argument.

As the appellant correctly notes, constitutional limitations on the exercise of federal jurisdiction can be neither "disregarded nor evaded." *Owen Equipment and Erection Co. v. Kroger*, 437 U.S. 365, 374, 98 S.Ct. 2396, 2403, 57 L.Ed.2d 274 (1978). However, federal courts are entitled to exercise inherent powers, those considered "necessary to the exercise of all others." *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 764, 100 S.Ct. 2455, 2463, 65 L.Ed.2d 488 (1980), citing *United States v. Hudson*, 7 Cranch 32, 34, 3 L.Ed. 259 (1812). We believe the imposition of Rule 11 sanctions, consistent with Congress' intent to streamline the administration of federal justice,[4] constitutes such an inherent power.

Although the appellant maintains that Rule 11 jurisdiction is dependent on subject matter jurisdiction, the Supreme Court in *Cooter & Gell v. Hartmarx Corp.*, ___ U.S. ___, 110 S.Ct. 2447, 110 L.Ed.2d 359 (1990),

[4] See, Schwarzer, Sanctions Under the New Federal Rule 11—A Closer Look, 104 F.R.D. 181 (1985).

the seminal case on Rule 11 sanctions, teaches otherwise. Characterizing the decision to sanction as a collateral one, the court concluded:

> Like the imposition of costs, attorney's fees, and contempt sanctions, the imposition of a Rule 11 sanction is not a judgment on the merits of an action. Rather, it requires the determination of a collateral issue: whether the attorney has abused the judicial process, and if so, what sanction would be appropriate.

Id. 110 S.Ct. at 2456.[5]

This circuit and others have recognized that to effectuate the goals of Rule 11, a district court must possess the authority to impose sanctions irrespective of the existence of subject matter jurisdiction. In *Vatican Shrimp Co. v. Solis*, 820 F.2d 674 (5th Cir.), *cert. den.* 484 U.S. 953, 108 S.Ct 345, 98 L.Ed.2d 371 (1987) and *News-Texan, Inc. v. Garland*, 814 F.2d 216 (5th Cir.1987), both involving improvidently removed suits, this court concluded that review of Rule 11 sanctions was available even when the district court which imposed them was without subject matter jurisdiction.[6]

[5] In *Cooter & Gell*, the specific question addressed by the court was whether voluntary dismissal under Fed.Rule.Civ.Pro. 41(a), after the filing of the offending pleading, deprived the district court of the authority to impose Rule 11 sanctions. We find, however, the court's discussion of the collateral character of Rule 11 orders applicable in this context as well.

[6] As the appellant correctly notes, both *Vatican Shrimp* and *News-Texan* addressed the jurisdiction of the appellate court to review sanctions imposed by a district court lacking subject matter jurisdiction. Although these

The appellant attempts to distinguish these cases on the basis that the sanctioned parties in each were attempting to *invoke* rather than *resist* federal jurisdiction. We find no merit in this distinction. Willy and his attorney were sanctioned for objectionable conduct which was independent of his jurisdictional posture in the case. Willy was entitled to contest removal jurisdiction to the extent a reasonable interpretation of the law allowed such a contest. However, this right did not include the authority to file misleading or incomprehensible pleadings, to use the discovery process for harassment, or to level frivolous allegations of conflicts of interest.[7] To effectuate the goals of deterrence and punishment, Rule 11 must embrace the conduct of those who resist, as well as those who invoke, federal jurisdiction.

Other circuits have adopted a similar view. In *Wojan v. General Motors Corp.*, 851 F.2d 969 (7th Cir.1988), the plaintiff invoked diversity jurisdiction. The defendant admitted diversity of citizenship in its early pleadings, but five years later asserted that diversity was lacking. After the action was dismissed, the district court concluded it

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opinions do not expressly address the propriety of the district court's Rule 11 jurisdiction, this conclusion is implicit in their broader holding.

[7] We are similarly unmoved by Willy's suggestion that any injury suffered by Coastal is the result of Coastal's decision to seek removal of this action. Essentially, Willy argues that if Coastal had not removed the case, Willy would not have had to file the offending pleadings. The district court's denial of the motion to remand indicates that there was at least a colorable basis upon which Coastal could have sought removal. We refuse to find that Coastal's good faith efforts "caused" Willy and his attorney to engage in sanctionable conduct.

had no jurisdiction to impose Rule 11 sanctions.[8] The Seventh Circuit reversed, concluding that the district court "[confused] subject matter jurisdiction with the court's inherent 'power' to engage in those judicial acts attendant to the presence of a live controversy before the court." *Id.* at 972.

In *Orange Production Credit Assoc. v. Frontline Ventures, Ltd.*, 792 F.2d 797 (9th Cir.1986), the plaintiff filed a complaint in federal court lacking a factual basis for subject matter jurisdiction. The Ninth Circuit upheld the district court's Rule 11 order ruling that "[t]he fact that the district court lacked jurisdiction to consider the merits of the case did not preclude it from imposing sanctions." *Id.* at 801, citing *Trohimovich v. Commissioner*, 776 F.2d 873, 875 (9th Cir.1985). *See also,*

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[8] The district court based its ruling on a case from this circuit, *Chick Kam Choo v. Exxon Corp.*, 764 F.2d 1148 (5th Cir.1985), *affirmed*, 817 F.2d 307 (5th Cir.1987), *reversed on other grounds*, 486 U.S. 140, 108 S.Ct. 1684, 100 L.Ed.2d 127 (1988). In that case, this court vacated a district court's Rule 11 order based upon its determination that the district court lacked subject matter jurisdiction. Although the Seventh Circuit in *Wojan* criticized this case without attempting to distinguish it, the distinction is easily made. In *Chick Kam Choo*, the plaintiffs filed a wrongful death claim in federal court, which was dismissed with prejudice for failure to state a cause of action. The plaintiffs then filed a nearly identical suit in Texas state court, which the defendants removed based on diversity. The district court granted the defendants' motion to dismiss on the basis of *res judicata* and imposed Rule 11 sanctions. This court vacated the award of sanctions because the offending conduct occurred in Texas *state* court rather than federal court. Instead of expressing an opinion on the authority of a district court to regulate conduct in its *own* arena, this decision merely prohibits the use of Rule 11 to regulate *state* court activities.

Szabo Food Service Inc. v. Canteen Corp., 823 F.2d 1073, 1077 (7th Cir.1987.) We reaffirm our conclusion in *Willy I* that the district court had jurisdiction to impose Rule 11 sanctions upon Willy and his attorney.

The Thomas *Formula*

Under the "law of the case" doctrine, a legal decision by this court is binding upon both district and appellate courts in all subsequent proceedings in the same case unless that decision is clearly erroneous. *Schexnider v. McDermott International, Inc.*, 868 F.2d 717 (5th Cir.1989); *White v. Murtha*, 377 F.2d 428, 431-32 (5th Cir.1967). Finding no clear error, we are bound by our prior decision affirming the district court's award of sanctions against both Willy and his attorney. Our review is limited to the amount of sanctions imposed under the *Thomas* criteria. We review the district court's calculations for an abuse of discretion. *Cooter & Gell, 110* S.Ct. at 2461.

The district court has broad discretion in imposing sanctions reasonably tailored to further the objectives of the rule. *Thomas*, 836 F.2d at 876-78. "Reasonableness" within the context of Rule 11 "must be considered in tandem with the rule's goals of deterrence, punishment, and compensation." *Id.* at 879. Additionally, the court must consider "the extent to which the nonviolating party's expenses and fees could have been avoided or were self-imposed." *Id.*

On remand, the district court examined both the causal relationship between Willy's conduct and the fees incurred by Coastal, as well as the amount of sanctions imposed. It found that Willy had filed confusing, misleading, and ill-founded pleadings (including the 110-

page summary judgment motion), asserted a baseless conflict of interest allegations and repeatedly misquoted Texas disciplinary and evidentiary rules. The court also found that Willy had asserted baseless RICO claims against eighty Coastal officers and employees and threatened to depose each of them in an effort to harass Coastal. The court recognized Coastal's repeated efforts, in open court and in private communications, to advise Willy and his attorney of these violations and mitigate its own expenses.

As the Supreme Court has noted, a district court is in the best position to "marshall the pertinent facts and apply the fact-dependent legal standard mandated by Rule 11." *Cooter & Gell*, 110 S.Ct. at 2459. Our review of the record discloses ample support for the district court's conclusions. We find no abuse of discretion in the amount of sanction imposed against Willy and his attorney.

Conclusion

For the foregoing reasons, the judgment of the district court is

AFFIRMED.

(Caption Omitted)

JUDGMENT

This cause came on to be heard on the record on appeal and was taken under submission on the briefs on file.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the District Court in this cause is affirmed.

IT IS FURTHER ORDERED that plaintiff-appellant pay to the defendants-appellees the costs on appeal to be taxed by the Clerk of this Court.

October 26, 1990

(Caption Omitted)

ON PETITION FOR REHEARING AND SUGGESTION FOR REHEARING IN BANC

(November 27, 1990)

The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular service on the Court having requested that the Court be polled on rehearing en banc, (Federal Rules of Appellate Procedure and Local Rule 35) the Suggestion for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

John M. Duhe, Jr.
United States Circuit Judge

ARTICLE III OF THE CONSTITUTION OF THE UNITED STATES

Section. 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section. 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

TITLE 28, UNITED STATES CODE:

§ 1254. Court of appeals: certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

§ 1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

§ 1441. Actions removable generally

(a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United State have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending. For purposes of removal under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded.

(b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

§ 1447. Procedure after removal generally

* * *

(c) A motion to remand the case on the basis of any defect in removal procedure must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.

§ 1919. District courts; dismissal for lack of jurisdiction

Whenever any action or suit is dismissed in any district court or the Court of International Trade for want of jurisdiction, such court may order the payment of just costs.

FEDERAL RULES OF CIVIL PROCEDURE:

Rule 11. Signing of Pleadings, Motions, and Other Papers; Sanctions

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the party's pleading, motion, or other paper and state the party's address. Except when otherwise specifically provided by rule or

statute, pleadings need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.